A **TENG CHANG KHIM & ORS**

v.

DATO' RAJA IDERIS RAJA AHMAD & ORS

B FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN CJ (MALAYA)
SURIYADI HALIM OMAR FCJ
AHMAD MAAROP FCJ
HASAN LAH FCJ
C ZALEHA ZAHARI FCJ
[CIVIL APPEAL NO: 01-7-03-2012(B)]
3 MARCH 2014

D ***CONSTITUTIONAL LAW:*** *Legislature - Parliamentary privilege - Resolution passed by majority members of state Legislative Assembly to create Select Committee on Competence, Accountability and Transparency (SELCAT) and determining its composition, powers and workings - Whether privileged - Whether formation of SELCAT and/or proceedings null and void and of no effect - Whether acts of state Legislative Assembly* E *may be impeached or questioned in court - Resolution of SLA establishing SELCAT with the composition, powers and workings as passed in the resolution and internal proceedings of SELCAT pursuant to that resolution - Whether justiciable - Federal Constitution, arts. 63(1) & 72(1)*

F ***CONSTITUTIONAL LAW:*** *Legislature - State Assembly - Proceedings in State Assembly - Whether court barred from questioning validity of proceedings - Resolution passed by majority members of state Legislative Assembly to create Select Committee on Competence, Accountability and Transparency (SELCAT) and determining its composition, powers and* G *workings - Whether privileged - Whether formation of SELCAT and/or proceedings null and void and of no effect - Whether acts of state Legislative Assembly may be impeached or questioned in court - Resolution of SLA establishing SELCAT with the composition, powers and workings as passed in the resolution and internal proceedings of SELCAT pursuant* H *to that resolution - Whether justiciable - Federal Constitution, arts. 63(1) & 72(1)*

The Selangor Legislative Assembly ('SLA') comprised of 36 elected members representing Pakatan Rakyat and 20 elected members (including the respondents) representing Barisan I Nasional. The first defendant (first appellant) was elected the Speaker of the SLA. Pursuant to a motion passed by the SLA on a majority vote, without objection whatsoever from any of the

Assembly members present, the Select Committee on Competence, Accountability and Transparency ('SELCAT') was established with the first defendant as the Chairman and the second to seventh defendants as committee members. Four of them were from Pakatan Rakyat and the balance two from UMNO. Notwithstanding anything contained in Order 75 of the Standing Orders of the Legislative Assembly for the State of Selangor ('Standing Orders'), SELCAT was authorised to conduct public hearings and the evidence presented therein may be publicly disseminated or published. The respondents filed an Originating Summons ("OS") seeking declarations that: (i) the composition of SELCAT did not reflect the balance between the parties within the SLA as required by Order 72(1) of the standing orders; (ii) in conducting its hearings publicly and in allowing the publication and dissemination of reports concerning its proceedings prior to the presentation of its formal report to the SLA, SELCAT has acted in breach of Order 75 of the Standing Orders and the Laws of the Constitution of Selangor 1959 ('Selangor Constitution'); (iii) the first defendant as Speaker of SLA, and the Chairman of the Privileges Committee of the SLA, was in a position of conflict when he sat as the Chairman of SELCAT and therefore, all proceedings conducted by SELCAT were null and void as being contrary to the rules of natural justice; (iv) the proceedings and functions of SELCAT had impeded upon matters reserved by the standing orders and/or the Selangor Constitution for the Public Accounts Committee of the SLA and thereby, SELCAT had acted in excess of its jurisdiction; (v) the matters deliberated upon by SELCAT had exceeded beyond the scope of the matters expressly referred to SELCAT by SLA and therefore, the said proceedings were null and void as being contrary to Order 73(4) of the standing orders; (vi) SLA did not have the jurisdiction to pass and/or enact criminal offences in the nature of the Contempt of the House (State of Selangor) Enactment 2009 and the same was therefore *ultra vires* the Selangor Constitution and/or the Federal Constitution; and (vii) the formation of SELCAT and/or the proceedings thereof were null and void and of no effect whatsoever. The appellants (the first, second, third, fourth, eight and ninth defendants in the High Court) applied to strike out the OS under O. 18 r. 19(1)(a), (b), (c) and/or (d) of the Rules of the High Court 1980 and/or under the inherent jurisdiction of the court by reason of, *inter alia*: (a) art. 72 of the Federal Constitution ('art. 72'); and (b) paras. 2 and 3 of the Schedule to art. 77 of the Selangor Constitution ('paras 2 and 3'). The

A B C D E F G H I

A High Court had allowed the appellants' application and struck out the OS on the grounds that the passing of the motion was clearly a proceeding of the SLA, and by virtue of art. 72 and paras. 2 and 3, it was not justiciable. It was further ruled that SELCAT, being a committee of the SLA, also enjoyed the same protection
B and as in the case of the proceeding of the SLA, the validity of its proceeding too could not be questioned. The Court of Appeal reversed the decision of the High Court. Hence, this appeal to the Federal Court on the question as to whether the resolution of the SLA establishing SELCAT with the composition, powers and
C workings as passed in the resolution, and the internal proceedings of SELCAT pursuant to that resolution, were justiciable in view of the provisions of parliamentary privilege entrenched in the Federal Constitution and the Selangor Constitution.

D **Held (allowing appellants' appeal)**
Per Ahmad Maarop FCJ delivering the judgment of the court:

(1) The principle of parliamentary privilege entrenched under art. 63(1) of the Federal Constitution ('art. 63(1)') applied to
E the State Legislature by art. 72(1) of the Federal Constitution ('art. 72(1)'), which encapsulates the non justiciability of the intra-mural activities of the State Legislature. The freedom of speech and debate in Parliament and in its committees are
F protected by parliamentary privilege as this is where the core or essential business of Parliament takes place. Even actions outside Parliament and its committees may fall within parliamentary proceedings because of their connection to them, and qualify for the protection of privilege. (para 34)

G **(2)** The phrase "there shall be freedom of speech and debate or proceedings in the Assembly" under para. 2 in the Schedule to the Selangor Constitution guarantees the freedom of speech, debate and proceedings in the SLA. The phrase "such freedom of speech and debate or proceedings shall not be
H liable to be impeached or questioned in any court of tribunal out of the assembly" guarantees the independence and non justiciability of the freedom of speech, debate and proceedings in the SLA. "Proceedings in the Assembly" under art. 72(1) include proceedings in SELCAT, being a committee established
I by the SLA. Thus, the protection of privilege enjoyed by the SLA also extended to SELCAT. (para 45)

(3) With regards to prayers (1), (2) and (3) in the OS, what was in effect questioned was the validity of the resolution of the SLA (establishing SELCAT) made in exercise of its collective and deliberative functions. The resolution was passed without any objection pursuant to a motion made in the meeting of the SLA. What was done by the SLA was done in the proceedings of the Assembly, the validity of which could not be impeached or questioned in any court or tribunal out of the Assembly in light of art. 72(1) and para. 2 of the Schedule to the Selangor Constitution. Hence, the issues raised in prayers (1), (2) and (3) were thus non justiciable. (paras 48 - 50)

(4) In relation to prayers (4) and (5) in the OS, the impugned functions and proceedings of SELCAT were "proceedings in the Assembly" under para. 2 in the Selangor Constitution and art. 72(1). The protection of the privilege under those provisions applied and the validity of these proceedings could not be impeached or questioned in court. (paras 54 - 56)

(5) The State Legislative Assembly has the power to authorise publication of anything in respect of the proceedings in the SLA or any committee thereof. Herein, in respect of SELCAT, the SLA had, in its wisdom authorised the publication, and its authorisation was in the form of the resolution itself. There was really no breach of standing Order 75 of the Standing Orders. (para 80)

(6) It was for the SLA to decide whether its decreed procedures had been followed and to lay down and construe its standing orders, to decide whether they have been obeyed, and more importantly and relevant to the issue at hand, to decide whether in any particular case to dispense compliance with such orders. The SLA herein had resolved to dispense with the compliance with standing Order 75 of the Standing Orders. That decision is not justiciable in the court of law. (para 81)

(7) There is nothing in the Standing Orders prohibiting the SLA from appointing the Speaker as the Chairman of SELCAT. In addition to being the Chairman of the Standing Order committee, by virtue of Standing Order 69(1), the first defendant as speaker of the SLA, is also the chairman of the Committee of Privileges by virtue of Standing Order 70(1). It is this Committee of Privileges which is given the important duty to consider any matter which appears to effect the

powers and privileges of the SLA referred to it by the SLA which include any contempt of the SLA by its members, and to submit a report to the SLA which is presided by the first defendant as Speaker. If the Speaker can be the Chairman of this committee, in the absence of an express provision in the standing orders prohibiting the appointment of the Speaker as Chairman of a Select Committee established under Standing Order 71(1), there was no reason why the Speaker could not be the Chairman of SELCAT which is an investigative body of the SLA. This was a matter within the realm of internal arrangement of the SLA. The SLA had the inherent power to appoint the first defendant (the Speaker) as the Chairman of SELCAT. (para 84)

(8) There was no question as to the existence of the power or jurisdiction for SELCAT to carry out the impugned functions and proceedings. The requisite power or jurisdiction was provided by the resolution of the SLA establishing SELCAT. In carrying out its functions and proceedings, SELCAT is governed by Standing Order 73(4) in that its deliberations shall be confined to the matters referred to it by the SLA. The court has no concern with the manner in which SELCAT carried out the Standing Order to perform its functions and proceedings. It was not appropriate for the court to exercise its supervisory powers to scrutinize what SELCAT did in its investigation in the exercise of the power conferred by the SLA. The supervisory responsibility on SELCAT belonged to the SLA. By virtue of Standing Order 92, even if there was a failure by SELCAT to comply with Standing Order 73(4) or any other Standing Order, such failure shall be treated as merely an irregularity and shall not in any way nullify the proceedings of SELCAT. (para 85)

Bahasa Malaysia *Translation Of Headnotes*

Dewan Undangan Negeri Selangor ('SLA') terdiri daripada 36 ahli dipilih mewakili Pakatan Rakyat dan 20 ahli dipilih (termasuk responden-responden) mewakili Barisan Nasional. Defendan pertama (perayu pertama) telah dilantik sebagai speaker SLA. Selaras dengan usul yang diluluskan oleh SLA di atas satu undi majoriti, tanpa bantahan daripada Ahli Dewan yang hadir, Jawatankuasa Terpilih bagi Kecekapan, Akauntabiliti dan Ketelusan ('SELCAT') telah ditubuhkan dengan defendan pertama sebagai Pengerusi dan defendan kedua hingga ketujuh sebagai Ahli Jawatankuasa. Empat daripada mereka adalah dari Pakatan Rakyat

dan dua dari UMNO. Jikapun terdapat apa-apa yang terkandung dalam Peraturan 75 Peraturan-Peraturan Tetap Dewan Undangan Negeri Selangor ('Peraturan-Peraturan Tetap'), SELCAT diberi kuasa untuk melaksanakan perbicaraan awam dan keterangan yang dibentangkan boleh secara terbuka disebarkan atau diterbitkan. Responden memfailkan saman pemula ('SP') untuk menuntut pengisytiharan bahawa (i) komposisi SELCAT tidak mencerminkan keseimbangan di antara parti-parti di dalam SLA seperti yang diperuntukkan oleh Peraturan 72(1) Peraturan-Peraturan Tetap; (ii) dalam menjalankan perbicaraan secara terbuka dan dalam membenarkan penerbitan dan penyebaran laporan berkenaan prosiding sebelum pembentangan laporan rasmi kepada SLA, SELCAT telah bertindak melanggar Perintah 75 Perintah-Perintah Tetap dan Undang-Undang Perlembagaan Selangor 1959 ('Perlembagaan Selangor'); (iii) defendan pertama sebagai Speaker SLA, dan Pengerusi Jawatankuasa Keistimewaan SLA, berada dalam keadaan konflik apabila beliau menjalankan tugasnya selaku Pengerusi SELCAT dan oleh itu, segala prosiding yang dilaksanakan oleh SELCAT adalah tak sah dan terbatal kerana bertentangan dengan peraturan keadilan asasi; (iv) prosiding dan fungsi SELCAT telah menggendalakan urusan-urusan yang dikhaskan oleh Perintah-Perintah Tetap dan/atau Perlembagaan Selangor untuk Jawatankuasa Kira-Kira Wang Awam SLA dan oleh itu, SELCAT telah bertindak melebihi bidangkuasanya; (v) perkara-perkara yang dipertimbangkan oleh SELCAT telah melebihi skop perkara-perkara ternyata merujuk kepada SELCAT oleh SLA dan oleh itu, prosiding tersebut adalah tak sah dan terbatal kerana bertentangan dengan Perintah 73(4) Perintah-Perintah Tetap; (vi) SLA tidak mempunyai bidangkuasa untuk meluluskan dan/atau menggubal kesalahan jenayah dalam sifat Enakmen Penghinaan Dewan (Negeri Selangor) 2009 dan yang sama adalah *ultra vires* Perlembagaan Selangor dan/atau Perlembagaan Persekutuan; dan (vii) penubuhan SELCAT dan/atau prosiding adalah tak sah dan terbatal dan tidak mempunyai apa-apa kesan. Perayu (defendan-defendan pertama, kedua, ketiga, keempat, kelapan dan kesembilan di Mahkamah Tinggi) memohon untuk membatalkan SP di bawah A. 18 k. 19(1)(a),(b) dan/atau (d) Kaedah-Kaedah Mahkamah Tinggi 1980 dan/atau di bawah bidangkuasa sedia ada di mahkamah oleh sebab, antara lain (a) per. 72 Perlembagaan Persekutuan ('per. 72') dan (b) perenggan 2 dan 3 Jadual Perkara 77 Perlembagaan Selangor ('perenggan 2 dan 3'). Mahkamah Tinggi telah membenarkan permohonan perayu dan membatalkan SP atas alasan bahawa kelulusan usul dengan jelasnya adalah

prosiding SLA, dan menurut per. 72 dan perenggan 2 dan 3, ia tidak boleh dihakimi. Ia juga memutuskan bahawa SELCAT, sebagai jawatankuasa SLA, juga mendapat perlindungan dan dalam kes prosiding SLA, kesahihan prosidingnya juga tidak boleh dipertikaikan. Mahkamah Rayuan telah mengakas keputusan Mahkamah Tinggi. Oleh itu, rayuan ini ke Mahkamah Persekutuan berkenaan soalan sama ada resolusi SLA menubuhkan SELCAT dengan komposisi, kuasa dan pekerjaan seperti diluluskan dalam resolusi, dan prosiding dalaman SELCAT menurut resolusi, boleh dihakimi memandangkan peruntukan keistimewaan parlimen yang telah berakar umbi di dalam Perlembagaan Persekutuan dan Perlembagaan Persekutuan.

Diputuskan (membenarkan rayuan perayu)
Oleh Ahmad Maarop HMP menyampaikan penghakiman mahkamah:

(1) Prinsip keistimewaan Parlimen yang telah berakar umbi di bawah per. 63(1) Perlembagaan Persekutuan ('per. 63(1)') digunapakai kepada Badan Perundangan Negeri oleh per. 72(1) Perlembagaan Persekutuan, yang merangkumi tidak kebolehbicaraan aktiviti intra-mural Badan Perundangan Negeri. Kebebasan bersuara dan membahas di Parlimen dan dalam jawatankuasanya adalah dilindungi oleh prinsip keistimewaan kerana ia adalah di mana urusan teras dan penting ditangani. Malah tindakan di luar Parlimen dan jawatankuasanya termasuk dalam prosiding parlimen disebabkan hubungan mereka dan layak mendapatkan perlindungan hak istimewa.

(2) Frasa "there shall be freedom of speech and debate or proceedings in the Assembly" di bawah perenggan 2 di dalam Jadual Perlembagaan Persekutuan menjaminkan kebebasan bersuara, perbahasan dan prosiding dalam SLA. Frasa "such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any court of tribunal out of the assembly" menjaminkan ketakbersandaran dan tidak kebolehbicaraan kebebasan bersuara, perbahasan dan prosiding dalam SLA. "Proceedings in the Assembly" di bawah per. 72(1) merangkumi prosiding SELCAT, sebagai jawatankuasa yang ditubuhkan oleh SLA. Oleh itu, perlindungan hak istimewa yang dinikmati oleh SLA juga dinikmati oleh SELCAT.

(3) Berkenaan permohonan (1), (2) dan (3) dalam SP, apa yang dipersoalkan adalah kesahihan resolusi SLA (menubuhkan SELCAT) yang dibuat dalam perlaksanaan fungsi-fungsi kolektif

dan diperbahaskan. Resolusi telah diluluskan tanpa bantahan di bawah usul dalam mesyuarat SLA. Apa yang dibuat oleh SLA dibuat dalam prosiding Dewan, kesahihannya yang tidak boleh didakwa atau dipersoalkan di dalam mana-mana Mahkamah atau tribunal di luar Dewan mengikut per. 72(1) dan perenggan 2 dalam Jadual Perlembagaan Selangor. Oleh itu, isu-isu yang dibangkitkan dalam permohonan (1), (2) dan (3) adalah tidak boleh dibicarakan.

(4) Berkenaan permohonan (4) dan (5) dalam SP, fungsi-fungsi dan prosiding SELCAT yang dipersoalkan adalah "proceedings in the Assembly" di bawah perenggan 2 Perlembagaan Selangor dan per. 72(1). Perlindungan keistimewaan di bawah peruntukan-peruntukan yang digunapakai dan kesahihan prosiding tidak boleh didakwa atau dipersoalkan di Mahkamah.

(5) Dewan Perundangan Negeri mempunyai kuasa untuk membenarkan penerbitan apa-apa yang berkaitan dengan prosiding SLA atau jawatankuasanya. Di sini, berkenaan dengan SELCAT, SLA telah, dalam kebijaksanaannya, membenarkan penerbitan, dan kebenaran yang diberi adalah dalam bentuk resolusinya sendiri. Tiada pelanggaran Perintah Tetap 75 Perintah-Perintah Tetap.

(6) Ia adalah untuk SLA memutuskan sama ada prosedur-prosedur diperintahnya telah diikuti dan untuk membentangkan dan mentafsirkan perintah-perintah tetap, untuk memutuskan sama ada mereka telah dipatuhi, dan paling penting sekali dan relevan pada isu yang ada, untuk memutuskan sama ada dalam mana hal-hal tertentu untuk mengenepikan pematuhan perintah yang diberikan. SLA di sini telah memutuskan untuk mengenepikan pematuhan Perintah Tetap 75. Keputusan itu tidak boleh dibicarakan di Mahkamah Undang-Undang.

(7) Tidak terdapat dalam Perintah-Perintah Tetap yang menghalang SLA daripada melantik Speaker sebagai Pengerusi SELCAT. Di samping menjadi Pengerusi Jawatankuasa Perintah Tetap, menurut Perintah Tetap 69(1), defendan pertama sebagai Speaker SLA, adalah juga pengerusi Jawatankuasa Keistimewaan menurut Perintah Tetap 70(1). Adalah Jawatankuasa Keistimewaan yang telah diberi tanggungjwab untuk mempertimbangkan apa-apa perkara yang memberi kesan kepada kuasa dan keistimewaan SLA yang dirujuk oleh SLA yang termasuk penghinaan SLA oleh ahlinya, dan untuk mengemukakan laporan kepada SLA yang dipengerusikan oleh

defendan pertama sebagai Speaker. Jika Speaker boleh menjadi Pengerusi jawatankuasa ini, jika tiada apa-apa peruntukan nyata dalam Perintah Tetap menghalang perlantikan Speaker sebagai Pengerusi Jawatankuasa Terpilih yang ditubuhkan di bawah Perintah Tetap 71(1), tiada alasan mengapa Speaker tidak boleh menjadi Pengerusi SELCAT iaitu badan penyiasatan SLA. Ini adalah perkara dalam lapangan urusan dalaman SLA. SLA mempunyai kuasa sedia ada untuk melantik defendan pertama (Speaker) sebagai Pengerusi SELCAT.

(8) Tiada persoalan timbul berkenaan kewujudan kuasa atau bidangkuasa untuk SELCAT melaksanakan fungsi-fungsi dan prosiding yang dipersoalkan. Kuasa atau bidangkuasa yang diperlukan telah disediakan oleh resolusi SLA dalam menubuhkan SELCAT. Dalam menjalankan fungsi dan prosiding, SELCAT ditadbir oleh Perintah Tetap 73(4) di mana perbincangannya adalah terbatas kepada perkara-perkara yang dirujuk oleh SLA. Mahkamah tidak perlu bimbang dengan cara SELCAT menjalankan Perintah Tetap untuk melaksanakan fungsi dan prosidingnya. Adalah tidak wajar bagi mahkamah melaksanakan kuasa-kuasa penyeliaan untuk meneliti apa yang dibuat oleh SELCAT dalam siasatannya apabila melaksanakan kuasa yang diberikan oleh SLA. Tanggungjawab penyeliaan SELCAT dimiliki oleh SLA. Menurut Perintah Tetap 92, jika terdapat kegagalan oleh SELCAT untuk mematuhi Perintah Tetap 73(4) atau mana-mana Perintah Tetap, kegagalan sebegitu hendaklah dianggap sebagai hanya ketidakteraturan dan tidak boleh dalam apa jua cara pun membatalkan prosiding SELCAT.

Case(s) referred to:

Ah Thian v. Government of Malaysia [1976] 1 LNS 3 FC ***(refd)***
Bradlaugh v. Gossett [1884] 12 QBD 271 ***(foll)***
British Railways Board v. Pickin [1974] 1 All ER 609 ***(refd)***
British Railways Board and Another v. Pickin [1974] 1 All ER 609 ***(refd)***
Dingle v. Associated Newspapers Ltd [1960] 2 QB 405 ***(refd)***
Dyson v. Attorney-General [1911] 1 KB 410 ***(refd)***
Fan Yew Teng v. Government of Malaysia [1976] 1 LNS 28 HC ***(refd)***
Hamilton v. Al Fayed [2001] 1 AC 395 ***(refd)***
Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors [1986] 2 CLJ 209; [1986] CLJ (Rep) 142 SC ***(foll)***
Inspector-General of Police & Anor v. Lee Kim Hoong [1979] 1 LNS 34 FC ***(refd)***
Kielley v. Carson 4 Moore's PC Cases 63 ***(refd)***
Lim Cho Hock v. Speaker, Perak State Legislative Assembly [1979] 1 LNS 45 HC ***(refd)***

PP v. Fan Yew Teng [1975] 1 LNS 127 HC ***(refd)***
R v. Chaytor [2010] 3 WLR 1707 ***(foll)***
Rediffusion (Hong Kong) Ltd v. Attorney General of Hong Kong (PC) [1970] AC 1136 ***(dist)***
Wason v. Walter, LR 4 QB 73 ***(refd)***
YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(dist)***

Legislation referred to:
Federal Constitution, arts. 4(3)(a), (b), 10(4), 63(1), (2), (4), 72(1), (2), (3), (4), 73(4), 77, 152, 153, 181
Perak State Constitution, arts. 33, 63
Rules of the High Court 1980, O. 18 r. 19
Selangor State Constitution, arts. 75, 77

Bill of Rights 1689 [UK], art. 9
Bristol and Exeter Railway Act 1836 [UK], s. 259
British Railways Act 1968 [UK], s. 18(I)
Copyright Act 1956 [HK], s. 31(3)
Rules of Supreme Court [UK], O. 18 r. 19
Theft Act 1968 [UK], s. 17(1)(b)

Other source(s) referred to:
Andrew Harding, *Law, Government and the Constitution of Malaysia*, 1996, pp 88, 89
Erskine May, *Parliamentary Practice*, 23rd edn, pp 738, 746

For the appellants - Tommy Thomas (Nur Ashikin Abdul Rahim with him); M/s Tommy Thomas
For the respondents - Kamarul Hisham (M Athimulan & Sallehudin Saidin with him); M/s The Chambers of Kamarul Hisham & Hasnal Rezua

[Editor's note: For the Court of Appeal judgment, please see Dato' Raja Ideris Raja Ahmad & Ors v. Teng Chang Khim & Ors [2012] 2 CLJ 288]

Reported by Amutha Suppayah

JUDGMENT

Ahmad Maarop FCJ:

[1] This is the appeal by the appellants (the first, second, third, fourth, eight and ninth defendant in the High Court) against the decision of the Court of Appeal given on 16 December 2011 which reversed the decision of the High Court. The High Court had, on 21 March 2011, allowed the appellants' application under

A O. 18 r. 19 of the Rules of the High Court 1980 (RHC) and struck out the Originating Summons No: 21-380-2009 ("the Originating Summons") filed by the respondents (the plaintiffs in the High Court).

B **[2]** The background facts leading to the present appeal are these. After the general election held on 8 March 2008, Pakatan Rakyat formed the state government in Selangor. The Selangor Legislative Assembly ("SLA") comprised of 36 elected members representing Pakatan Rakyat and 20 elected members (including C the respondents) representing Barisan Nasional which formed the opposition. On 22 April 2008 the first defendant was elected the Speaker of the SLA. On 26 May 2008 the Select Committee on Competence, Accountability and Transparency ("SELCAT") was established when Ms Elizabeth Wong Keat Ping, the assembly D member from Bukit Lanjan, moved the motion for, *inter alia*:

(i) the formation of SELCAT;

(ii) Teng Chang Khim to become the Chairman of SELCAT;

E (iii) the second to seventh defendants to become committee members of SELCAT with four of them from Pakatan Rakyat and the balance two from UMNO; and

(iv) notwithstanding anything contained in O. 75 of the Standing Orders, SELCAT is authorised to conduct public hearings and F the evidence presented therein may be publicly disseminated or published.

[3] The motion was seconded by one Mr Ean Yong Hian Wah, the assemblyman from Seri Kembangan and subsequently G passed by the SLA on a majority vote, without objection whatsoever from any of the assembly members present. On or about 9 November 2009, the respondents filed the originating summons in the Shah Alam High Court seeking for the following declarations:

H

(i) a declaration that the composition of SELCAT does not reflect the balance between the parties within the SLA as required by O. 72(1) of the Standing Orders of the Legislative Assembly for the State of Selangor ("Standing Orders");

I

(ii) a declaration that in conducting its hearings publicly and in allowing the publication and dissemination of reports concerning its proceedings prior to the presentation of its

formal report to the SLA SELCAT has acted in breach of O. 75 of the Standing Orders and the Laws of the Constitution of Selangor, 1959 ("Selangor Constitution");

(iii) a declaration that the first defendant as Speaker of SLA, and the Chairman of the Privileges Committee of the SLA, is in a position of conflict when he sits as the Chairman of SELCAT and therefore all proceedings conducted by SELCAT are null and void as being contrary to the rules of natural justice;

(iv) further and/or in the alternative, a declaration that the proceedings and functions of SELCAT have impeded upon matters reserved by the Standing Orders and/or the Selangor Constitution for the Public Accounts Committee of the SLA and thereby SELCAT has acted in excess of its jurisdiction;

(v) further and/or in the alternative, a declaration that the matters deliberated upon by SELCAT have exceeded beyond the scope of the matters expressly referred to SELCAT by SLA and therefore the said proceedings are null and void as being contrary to O. 73(4) of the Standing Orders;

(vi) a declaration that the SLA does not have the jurisdiction to pass and/or enact criminal offences in the nature of the Contempt of the House (State of Selangor) Enactment 2009 and the same is therefore *ultra vires* the Selangor Constitution and/or the Federal Constitution; and

(vii) in consequence, a declaration that the formation of SELCAT and/or the proceedings thereof are null and void and of no effect whatsoever.

[4] Later, *vide* summons-in-chambers (encl. 7), the appellants applied to strike out the originating summons under O. 18 r. 19(1)(a), (b), (c) and or (d) of RHC and/or under the inherent jurisdiction of the court by reason of, *inter alia*:

(a) Article 72 of the Federal Constitution; and

(b) paragraphs 2 and 3 of the Schedule to art. 77 of the Law of Constitution of Selangor, 1959 ("Selangor Constitution").

[5] On 21 March 2011, the High Court allowed the striking out application. The respondents appealed to the Court of Appeal which appeal was allowed on 16 December 2011. Dissatisfied, the

appellants applied to this court for leave to appeal. Leave to appeal was granted by this court on the following question ("the leave question"):

> Whether the composition, powers and management of Committees established under the Standing Orders of the Legislative Assembly of the State of Selangor can be the subject-matter of challenge in legal proceedings, having regard to constitutional privileges granted to the Legislative Assembly and its Committees under the:
>
> (i) Federal Constitution, Article 72; and
>
> (ii) Selangor Constitution, 1st Schedule, Paragraphs 2 and 3.

In The High Court

[6] In allowing the application in encl. 7, the learned High Court Judge held that upon considering all of the cause papers and submissions of the appellants and the respondents before her, she was satisfied this was a plain and obvious case for striking out. She ruled that the declarations sought by the respondents was concerned with the issue, whether the SLA's act or decisions were within the SLA's power to make? Following *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (intervener)* [2009] 4 CLJ 253; [2009] 4 MLJ 24, she was of the view that the court was empowered to ascertain whether those powers being questioned had in fact been provided by the law. She took into consideration the fact that the establishment of SELCAT was pursuant to a motion passed by a majority vote of the SLA. She held that the passing of the motion was clearly a proceeding of the SLA, and that therefore by virtue of art. 72 of the Federal Constitution and paras. 2 and 3 of the schedule to the Selangor Constitution, its validity could not be challenged. In other words, it was not justiciable. She further ruled that SELCAT, being a committee of the SLA, also enjoyed the same protection and as in the case of the proceeding of the SLA, the validity of its proceeding too could not be questioned. In support of her decision, the learned judge relied on *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 1 LNS 45; [1979] 2 MLJ 85. She also relied on *Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors* [1986] 2 CLJ 209; [1986] CLJ (Rep) 142; [1986] 2 MLJ 412, and Standing O. 92 of the Standing Orders of the SLA ("Standing Orders") which provided that any failure of the SLA or any of its committees, including SELCAT, to comply with any provisions of the Standing Orders shall not nullify any of the

proceedings or decision resulting therefrom. In this regard she also relied on *Bradlaugh v. Gossett* [1884] 12 QBD 271 which clarified that the House of Commons was not subject to the control of Her Majesty's Court in its administration of that part of the statute law which had relation to its internal procedure only. What was said or done within its walls could not be inquired in a court of law. A resolution of the House of Commons cannot change the law of the land. But a court of law had no right to inquire into the propriety of a resolution of the house restraining a member from doing within the walls of the house itself something which by the general law of the land he had a right to do, *viz*, take the oath prescribed by the Parliamentary Oaths Act, 1866. It was then held that this being a matter relating to the internal management of the procedure of the House of Commons, the court had no power to interfere. Similarly, she held that in the case before her, the Standing Orders concerned the SLA's internal procedure only. So, even if the decision or acts of the SLA or SELCAT appeared to be inconsistent with the Standing Orders, the court had no power to interfere.

In The Court Of Appeal

[7] In reversing the decision of the High Court, the Court of Appeal held that the originating summons disclosed a reasonable cause of action warranting it to be considered by the court on merits. This is what it said:

> A proper perusal of the OS would immediately bring into focus the Plaintiffs' allegations of the Defendants' breaches of the SO, the fundamental rules of natural justice and the Selangor State Constitution. These alleged breaches clearly disclose a reasonable cause of action requiring further ventilation by the parties on merits, pertaining to substantive issues or questions of law of constitutional importance which are in a developing or revolving state. These questions are not unarguable. The determination on such alleged breaches are eminently unsuitable for summary disposal under the striking out procedure. So long as the OS raises some questions fit to be decided by a Judge, the mere fact that the case is weak, and not likely to succeed, is no ground for striking out. A court should not strike out a claim or an OS concerning an area of law which is in the process of development or evolution, as in the instant Appeal. In these circumstances, the Plaintiffs should not be summarily deprived of his opportunity to argue their case: See *Malaysian Court Practice 2008*, Vol 1 pp 1553, 1555 and 1556. Our answer to the above question posed in para [12] is in the affirmative.

Submission Of The Appellants

[8] Learned counsel for the appellant submitted that it was plain and obvious that the originating summons must be struck out. He argued that the case before the court was very much law driven. The thrust of his submission was that the issues raised in the originating summons were not justiciable. He argued that the five declarations sought in the originating summons concerned the composition, powers and management of SELCAT, a committee established by the SLA under the Standing Orders. He said the composition, powers and management of SELCAT was in law protected by high constitutional principle of separation of powers rendering it immune from being questioned by a Court of law. He referred to art. 72(1) of the Federal Constitution which provided that the validity of any proceeding in the Legislative Assembly of any state shall not be questioned in any court. Reference was also made to art. 63(1) of the Federal Constitution, which, according to him, recognised the same constitutional privilege accorded to Parliament or any of its committees. The article provides:

> The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any Court.

[9] The State of Selangor had embodied the aforesaid privileges in art. 77 of its Constitution and paras. 2 and 3 in the Schedule thereto. He then submitted that it was not the business of the court to interfere with the internal affairs of the SLA or SELCAT, which were matters for the SLA to decide. To allow the originating summons would mean, the court would become an appeal court for decisions internally made in the SLA, which was not the function of the court. He further submitted that, in any event, the decision of the speaker of the SLA was final as by virtue of Standing Order 92 of the Standing Orders, if the speaker were to make mistakes, these would be considered as irregularities and would not nullify the proceedings.

[10] Learned counsel proceeded to show how the legislative immunity provisions had been applied by the courts. Firstly, he referred to *Lim Cho Hock* where the court held that under the *lex et consuetudo Parliamenti*, the Perak Legislative Assembly had control over its proceeding, procedure and members, and may decide questions as to their qualifications and disqualifications, and that the provisions of art. 72(1) of the Federal Constitution as well as

art. XXXIII of the Perak State Constitution crystallised and encapsulated that important principle of non justiciability of its intra mural activities in the courts.

[11] He then referred to a passage in the judgment of Wan Hamzah SCJ in *Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors* [1986] 2 CLJ 209; [1986] CLJ (Rep) 142; [1986] 2 MLJ 412 where his Lordship opined that the proceedings of the Committee of Privileges formed part of the proceedings of the Dewan. To question the validity of the proceedings of the Committee of Privileges in court was to question the validity of the proceedings of the Dewan, which was forbidden under art. 72(1) of the Federal Constitution.

[12] Learned counsel then submitted that the law on legislative immunity in Malaysia was settled and the courts had consistently taken the position that as long as the act in question related to the validity of the "proceeding" of the Legislative Assembly or its committees, the court would not interfere or act as an appellate body. However, he said that this constitutional privilege had to some extent been watered down by this court in *YAB Dato' Dr Zambry*'s case by the following passage in its judgment:

> It follows that **art 72(1) must be read as being subject to the existence of a power or jurisdiction**, be it inherent or expressly provided for, to do whatever that has been done. *The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the applicants are therefore justiciable.* It now becomes necessary to ascertain whether there was any power to authorize the suspension of the applicants on account of the alleged contempt committed by them ...

[13] Learned counsel contended that in *Dato' Dr Zambry* the Federal Court laid took the position that the judiciary was allowed to enquire into acts of a legislative body, to ascertain whether the power to carry out such acts have been provided by the law, and if the answer was in the negative, the court could proceed to declare such acts to be void.

[14] Learned counsel contended that applying the principles laid down by the landmark authorities on legislative immunity or the principles enunciated in Dato' Dr Zambry, the declaration sought by the respondents in the originating summons infringed on acts and proceedings of the SLA and SELCAT in respect of which

clear provisions were provided by law, and that therefore the court accordingly was not empowered to question the validity of such proceedings.

Submissions Of The Respondents

[15] In his submissions, learned counsel for the respondents contended that serious question of constitutional law has been raised in this case and as such unsuitable for summary disposal without a hearing on the merits. He relied on *Dyson v. Attorney-General* [1911] 1 KB 410 where Cozen-Hardy MR opined that:

> Order XXV., r 4 was not intended to take the place of a demurrer, and that it ought not to be applied to an action involving serious investigation of ancient law and questions of general importance ...

[16] According to the learned counsel the only issue in this case was one of jurisdiction – whether the High Court had jurisdiction to enquire into the complaint of the respondents regarding the resolution of SLA made on 26 May 2008 establishing SELCAT. The issue here is whether O. 72(1) of the Standing Orders had been complied with which, according to counsel could be decided only at the hearing of the originating summons on its merits. In this regard, according to the learned counsel, it was settled law from the decision in *Dato' Dr Zambry* that the court was empowered to ascertain whether those powers of the SLA which was questioned by the respondents had in fact been provided for by the law – whether the power exercised by the SLA had a constitutional or statutory foundation. Learned counsel submitted that when SLA established SELCAT on 26 May 2008, the SLA did not comply with Standing Order 72(1) of the Standing Orders and thus SELCAT had no constitutional or statutory foundation. That really was the thrust of the respondent's argument. More of this when the justiciability or otherwise of the issues raised by the originating summons is dealt with in this judgment. Learned counsel also raised the following points:

(a) The resolution which established SELCAT completely disregarded Standing Order 75 in so far as it allowed SELCAT to conduct its hearing publicly and to publish and disseminate its report concerning its proceedings.

(b) The resolution appointing the Speaker of SLA to be the chairman of SELCAT was contrary to the rule of natural justice.

Decision

[17] At this juncture three matters need to be addressed. First, at the outset of his submission before us, learned counsel for the respondents informed the court that in respect of the declaration sought in prayer (vi) of the originating summons, that the SLA did not have the jurisdiction to pass and/or enact criminal offences in the form of the Contempt of the House (State of Selangor) Enactment 2009, and that the Enactment was *ultra vires* the State Constitution and/or the Federal Constitution, the respondents conceded that only the Federal Court had the jurisdiction to make such a declaration. In the High Court the respondents did not argue this point. Nevertheless, according to the learned counsel, the declaration in prayer (vi) amounted to questioning the validity of a law passed by a State Legislature under art. 4(3) of the Federal Constitution on the ground that it had no power to make such laws. Such a challenge could only be made in proceedings pursuant to art. 4(3)(a) or (b) of the Federal Constitution as the case may be (in proceedings between the Federation and one of the States, or in proceedings between the Federation and the State which passed the impugned law), or in proceedings for a declaration that the law was invalid on such a ground. In *Ah Thian v. Government of Malaysia* [1976] 1 LNS 3; [1976] 2 MLJ 112 at p. 113 Suffian LP said:

> Thirdly, clause (1) of article 128 provides that only the Federal Court has jurisdiction to determine whether a law made by Parliament or by a State legislature is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. This jurisdiction is exclusive to the Federal Court, no other court has it. This is to ensure that a law may be declared invalid on this very serious ground only after full consideration by the highest court in the land.

[18] Consequently, the respondents did not proceed with the declaration sought under prayer (vi). Thus, in this judgment nothing more need be said about this prayer.

[19] The second matter concerns the suitability or otherwise of disposing of this case by way of the summary procedure of striking out under O. 18 r. 19 of the Rules of the High Court ("RHC"). We are unable to agree with the contention of the learned counsel for the respondents that since this case involved a serious question of constitutional law it was an unsuitable case for disposal by the summary procedure under O. 18 r. 19 RHC and

that the originating summons should be allowed to be given a full hearing on its merits. In this regard we derive support from the decision of the Privy Council in *Rediffusion (Hong Kong) Ltd v. Attorney General of Hong Kong* (PC) [1970] AC 1136 where similar argument was raised by the plaintiff, did not find favour with the court. In that case the court said:

> But in the cause of action summons the plaintiffs have repeated before their Lordships the objection raised in the Supreme Court that the cause of action summons involves complex questions of law unsuitable to be dealt with at this early stage by the summary procedure of striking out the writ and that the action should have been allowed to go to trial or the question of law involved set down for hearing as a preliminary issue after the pleadings had been closed.
>
> It is a well-established principle that the summary power under R.S.C., Ord. 18, r. 19, to strike out a writ or pleading as disclosing no reasonable cause of action or defence should be exercised only in plain and obvious cases. This principle can be shown to be correct according to the evident intention of the rule for several reasons: (1) There is the reference to a "reasonable" cause of action or defence. (2) There is the context of "scandalous frivolous or vexatious" and "prejudice, embarrass or delay the fair trial of the action" and "otherwise an abuse of the process of the court." (3) The application is made at a very early stage of the action when the pleadings are not complete and no evidence has been adduced. (4) The application is (in England in the Queen's Bench Division) to a master and on appeal to the judge in chambers with no further appeal as of right. Normally the hearing of such an application does not involve consideration of elaborate arguments and is of a short and summary character. But the court must have a discretion as to the length of the hearing. There have been cases in England where an application of this kind involved an important question and after elaborate arguments it became plain and obvious that the alleged cause of action was unsustainable so that an order to strike out should be made: *Rondel v. Worsley* [1969] 1 A.C. 191; *Wiseman v. Borneman* [1969] 3 W.L.R. 706; *Roy v. Prior* [1970] 1 Q.B. 283; and *Schmidt v. Secretary of State for Home Affairs* [1969] 2 Ch. 149.
>
> The cause of action summons was heard with the consent of the parties by the Full Court consisting of the same judges as had previously heard the jurisdiction summons. The constitutional law of Hong Kong and the cases which were relevant to the jurisdiction summons had been fully canvassed at the hearing of that summons and comprised nearly the whole of the law and cases relevant to the cause of action summons. In the light of the

> argument about them which they had already heard the judges of the Full Court were sufficiently familiar with the law involved to find "plain and obvious" a case which without the benefit of prior indoctrination might well have seemed complex.
>
> Their Lordships see no reason to criticise the way in which the Full Court exercised their discretion to entertain the cause of action summons and to decide the question of law which it raised. They are satisfied that the matter has been fully argued before the Supreme Court and in these consolidated appeals and that no useful purpose would be served by deferring a decision as to whether the writ as at present framed discloses any reasonable cause of action.

[20] Incidentally, that case was also relied upon heavily by learned counsel for the respondents in support of the primary point of his submission. Back to the present appeal we find that full and extensive arguments were heard at the hearing of the striking out application at the High Court, and on the appeal before the Court of Appeal. All material facts were before the respective courts in making a considered decision whether the originating summons disclosed a reasonable cause of action.

[21] The third matter concerns the leave questions. It appears to us that the leave question posed is too broad. It talks about the justiciability of the composition, powers and management of committees established under the Standing Order of the SLA. There are a number of committees the establishment of which are provided for by the Standing Orders, and they are the Public Account Committee, the Standing Orders Committee, the Committee of Privileges and the Select Committees. The composition, powers and management of the first three committees were not in issue before the High Court and the Court of Appeal. What was being challenged in the originating summons was limited to the composition, powers and proceedings of SELCAT, and the resolution of the SLA establishing SELCAT. The composition, powers, working and proceedings of SELCAT depended on that resolution to which SELCAT owed its origin. Clearly the justiciability of that resolution and the internal proceedings of the SLA as well as the internal proceedings of SELCAT lies at the heart of this appeal. In our considered view therefore the question ought to be narrowed and limited to this specific issue which was the subject of the judgments in the courts below.

[22] This appeal raised the question whether the resolution of the SLA establishing SELCAT with the composition, powers and working as passed in the resolution, and the internal proceedings of SELCAT pursuant to that resolution, are justiciable in view of the provisions of parliamentary privilege entrenched in the Federal Constitution and the Selangor Constitution. The privileges of Parliament are derived from English law, the main policy of which is to defend Parliament, and its members from interference with the freedom of their deliberations. The purpose is to ensure freedom and independence for Parliament to conduct its legislative and deliberative business without interference from the Crown or the Courts (See *R v. Chaytor* [2010] 3 WLR 1707). These privileges are vouchsafed so that Parliament can fulfil its key function in a democratic system of government (see *British Railways Board v. Pickin* [1974] 1 All ER 609, per Lord Simon of Glaisdale at p. 627). The principle of parliamentary privilege entrenched under art. 63(1) the Federal Constitution that "the validity of any proceeding in either House of Parliament or any committee thereof shall not be questioned in any court" (which is applied to the State Legislatures by art. 72(1) of the Federal Constitution) was derived from the English Bill of Rights 1689. (See Andrew Harding, *Law, Government and the Constitution of Malaysia*, Malaysian Law Journal Sdn Bhd 1996, pp. 88-89). Article 9 of the Bill of Rights provides that "the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

Similar principle is encapsulated in the provision under para. 2 in the Schedule to the Selangor Constitution (ie, the schedule on the powers and privileges of the SLA).

[23] In contending that there was a shift in the position of common law after *Bradlaugh v. Gossett*, learned counsel for the respondents relied on the Privy Council judgment in *Rediffusion (supra)*. Lord Diplock (delivering the majority judgment) in upholding the decision of the Supreme Court of Hong Kong that they had jurisdiction to enter upon the inquiry whether or not it would be unlawful for the Legislative Council of Hong Kong to pass a proposed bill, and that if found to be unlawful, to decide in their discretion whether or not to grant the relief by way of declaration and injunction claimed stated as follows:

> The immunity from control by the courts, which is enjoyed by members of a legislative assembly while exercising their deliberative functions is founded on necessity. The question of the

> extend of the immunity which is necessary raises a conflict of public policy between the desirability of freedom of deliberation in the legislature and the observance by its members of the rule of law of which the courts are the guardians. If there will be no remedy when the legislative process is complete and the unlawful conduct in the course of the legislative process will by then have achieved its object, the argument founded on necessity in their Lordships' view leads to the conclusion that there must be a remedy available in a court of justice before the result has been achieved which was intended to be prevented by the law from which **a legislature which is not fully sovereign derives its powers.** (emphasis added)

[24] We are unable to agree with the submission of the learned counsel for the respondents. That passage must be considered in the factual context of that case. That passage was made in the context of "a legislature which was not fully sovereign". In *Rediffusion*, the headnotes reveal the following facts. The plaintiffs held an exclusive licence granted by the Government of Hong Kong to carry on the business of rediffusion of television programmes in the colony, subject to the condition that they should not infringe any copyright in the works which they transmitted. Although the Copyright Act, 1911, had been substantially repealed in its application to the United Kingdom and had been replaced by the Copyright Act, 1956, the Act of 1911 remained in force in Hong Kong under transitional provisions. Section 31 of the Act of 1956 enabled an order in Council to be made extending any of the provisions of the Act to Hong Kong and granted the legislature limited powers to modify or add to those provisions in their operation as part of the law of Hong Kong. No such direction to extend the Act of 1956 had been given. In 1967 the colonial secretariat informed the plaintiffs that it was proposed to extend certain provisions of the Act of 1956 to Hong Kong and to enact an Ordinance with certain modifications, in particular a modification that the relaying by rediffusion of television broadcasts was a breach of the separate copyright in a television broadcast. The plaintiffs took the view that as a matter of law the proposed modifications were of such a nature as brought them within the express prohibitive words of s. 31(3), and that they would seriously imperil their commercial future and adversely affect their legal rights. They issued a writ against both the Attorney-General, as a representative defendant on behalf of the Legislative Council, and the Deputy Colonial Secretary for a declaration that it would be unlawful for the Legislative Council to pass the proposed bill and for an injunction

to restrain the Council from presenting the bill to the Governor for his assent. The defendants issued a summons (the jurisdiction summons) to set aside the writ upon the ground that the court had no jurisdiction to grant the reliefs sought; and a summons (the cause of action summons) to strike out the writ on the ground that it disclosed no reasonable cause of action. The Attorney General conceded that, for the purposes of the cause of action summons only, the proposed bill would be repugnant to the statutes of the United Kingdom and the proposed Order in Council. The Supreme Court of Hong Kong dismissed the jurisdiction summons on the ground that the court had jurisdiction to interfere either by persuasion (declaration) or compulsion (injunction) with the conduct of the members of the Legislative Council in carrying out the deliberative part of the legislative process, if that conduct was unlawful; but in the cause of action summons they struck out the writ on the ground that the plaintiffs had failed to disclose any reasonable cause of action.

[25] In our view, *Rediffusion* is distinguishable from the facts of instant case. The constitutional position of the legislature in Hong Kong (at the material time) was different from the constitutional position of Parliament or the State Legislatures in Malaysia. First, the legislature of Hong Kong was not a representative legislature. None of its members was elected. All of them, including the unofficial members, were appointed by or on behalf of the Crown. Second, and more importantly, the legislature of Hong Kong was not a fully sovereign legislature. These are clear from the judgment of Lord Diplock in *Rediffusion* when his Lordship set out the significant matters in connexion with the constitutional position of the legislature of Hong Kong:

> The significant matters in this constitution for the purposes of the present appeals are: First, the legislature of Hong Kong consists of the Governor and the Legislative Council. The latter alone is not the legislature, it is the deliberative part of it. *Secondly, it is not a representative legislature. None of the members of the Legislative Council is elected; all, including the unofficial members, are appointed by or on behalf of the Crown.* Thirdly, although the advice and consent of the Legislative Council, signified by its passing a bill, is an essential part of the legislative process in Hong Kong, no bill passed by the Legislative Council has any effect as part of the law of Hong Kong unless and until it is assented to by the Governor. Fourthly, the Governor has a discretion, uncontrolled by the Legislative Council though subject to control by the Crown, to give or to withhold consent to a bill; though he has

> no power to make any law for Hong Kong except in the terms of a bill passed by the Legislative Council. Fifthly, the Letters Patent do not, but the Royal Instructions do, contain some provisions which themselves control the procedure to be followed in the Legislative Council in passing bills. Of this the prohibition of the introduction of a private bill by an unofficial member without prior publication is an example. *Sixthly, the legislature of Hong Kong is not a fully sovereign legislature, even apart from the reserved power of disallowance by the Crown.* Although the law-making power is conferred on the legislature in the widest possible terms by Clause VII of the Letters Patent it is subject to the limitation that the legislature cannot make laws which have effect outside the territorial limits of the colony and to the limitation imposed by the Colonial Laws Validity Act, 1865, of the United Kingdom Parliament. *The nature and effect of this latter limitation will require closer examination in connection with the cause of action summons. For the purposes of the jurisdiction summons it suffices to observe that it invalidates laws made by the Hong Kong legislature to the extent that they are repugnant to the provisions of any Act of the United Kingdom Parliament which extend to the colony.* (emphasis added)

[26] Thus, in *Rediffusion* the legal principles which governed the jurisdiction of English Courts to interfere in the conduct of proceedings in the fully sovereign Parliament of the United Kingdom could not be applied in answering the question before the court, and more importantly, at the material time, members of a legislative assembly in a colony did not enjoy all of the privileges and immunity from control by courts of justice which were enjoyed by members of the Parliament of the United Kingdom. Lord Diplock made this clear in his judgment:

> Thus the broad question on the jurisdiction summons is whether a court of justice in Hong Kong has any power to interfere either by persuasion (declaration) or compulsion (injunction) with the conduct of members of the Legislative Council in carrying out a part of the legislative process, or more specifically in carrying out the deliberate part of the legislative process, even though that conduct is unlawful.
>
> *This question cannot be answered by applying to Hong Kong the legal principles which govern the jurisdiction of English courts to interfere in the conduct of proceedings in the fully sovereign Parliament of the United Kingdom. It is well settled that the common law of England which is introduced into a colony does not include the whole of the lex et consuetudo parliamenti. Members of a legislative assembly in a colony do not enjoy all the privileges and the immunity from control by courts of justice which are enjoyed by members of the Parliament of the United Kingdom,* but only such of those privileges and so much of that

A immunity as are essential to enable them to carry out their functions under the colonial constitution (*Kielley v. Carson* (1842) 4 Moo. P.CC. 63; *Doyle v. Falconer* (1866) L.R. 1 P.C. 328.) (emphasis added)

B **[27]** Therefore, *Rediffusion* is not be the authority regarding the position of the common law on Parliamentary privilege after *Bradlaugh v. Gossett* as argued by learned counsel for the respondents. In Malaysia the privileges and immunity of Parliament and the State Legislatures from control of the court are entrenched in the Federal Constitution as well as the State C Constitutions.

[28] In *Bradlaugh v. Gossett* the plaintiff, Charles Bradlaugh, was duly elected a burgess to serve in the House of Commons for Northampton, and was entitled to take the oath by law prescribed D to be taken by members of the House of Commons, and to sit and vote in the House as one of the representatives of Northampton. In May, 1883, Mr Bradlaugh required the Speaker to call him to the table for the purpose of taking the oath. The Speaker did not do so. On the 9th of July, the House of E Commons resolved, "that the Serjeant-at-Arms do exclude Mr Bradlaugh from the house until he shall engage not further to disturb the proceedings of the house." Mr Bradlaugh thereupon wrote a letter to the Serjeant-at-Arms asking him whether he understood the order of the house to mean that he was to F prevent Mr Bradlaugh by actual force from entering the house for the purpose of taking his seat. The Serjeant-at-Arms replied that it would be his duty to exclude Mr Bradlaugh from the house till otherwise instructed by the house or the Speaker. Some correspondence also passed between Mr Bradlaugh and the G Speaker, the effect of which was that the Speaker informed Mr Bradlaugh that his exclusion from the house would continue "until he should engage not to attempt to take the oath in disregard of the resolution of the house now in force." The statement of claim sought, – first, a declaration that the order of the house of July H 9th be declared to be beyond the power and jurisdiction of the house to make, and to be void, – secondly, an order restraining the Serjeant-at-Arms from preventing Mr Bradlaugh by force from entering the house and taking the oath as a member. To this there was a demurrer, on the ground that the statement of claim I did not state any matter for which an action could be maintained, and did not ask any relief which could be by law given in the action. (See [1884] 12 QBD at pp. 271-272). The court held that

as the matter related to the internal management of the procedure of the House of Commons, the Court of Queen's Bench had no power to interfere. In his judgment Lord Coleridge CJ said:

> Alongside, however, of these propositions, for the soundness of which I should be prepared most earnestly to contend, *there is another proposition equally true, equally well established, which seems to me decisive of the case before us. What is said or done within the walls of Parliament cannot be inquired into in a court of law.* On this point all the judges in the two great cases which exhaust the learning on the subject, *Burdett v. Abbott* (1) and *Stockdale v. Hansard* (2); are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline with their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and in efficiency without it."(3) (emphasis added)

[29] In a separate judgment, Stephen J restated the principle that the House of Commons is not subject to the control of the court in its administration of that part of the statute law which has relation to its own internal proceedings, and that the house should have exclusive jurisdiction to regulate the course of its own proceedings. His Lordship also held that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its wall is concerned; and even if that interpretation be erroneous, the court has no power to interfere with it, directly or indirectly:

> The legal question which this statement of the case appears to me raise for our decision is this: - *Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable.*
>
> Many authorities might be cited for this principle; but I will quote two only. The number might be enlarged with ease by reference to several well known cases. Blackstone says (1):
>
> > *The whole of the law and custom of Parliament has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which it relates, and not elsewhere.*

This principle is re-stated nearly in Blackstone's words by each of the judges in the case of *Stockdale v. Hansard*. As the principal result of that case is to assert in the strongest way the right of the Court of Queen's Bench to ascertain in case of need the extent of the privileges of the House, and to deny emphatically that the court is bound by a resolution of the House declaring any particular matter to fall within their privilege, these declarations are of the highest authority. Lord Denman says (1): *"Whatever is done within the walls of either assembly must pass without question in any other place." Littledale, J., says (2): "It is said the House of Commons is the sole judge of its own privileges; and so I admit as far as the proceedings in the House and some other things are concerned." Patteson, J., said (3): "Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere." And Coleridge, J., said (4): "That the House should have exclusive jurisdiction to regulate the course of its own proceedings and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity."*

Apply the principle thus stated to the present case. We are asked to declare an order of the House of Commons to be void, and to prevent its execution in the only way in which it can be executed, on the ground that it constitutes an infringement of the Parliamentary Oaths Act. (5) This Act requires the plaintiff to take a certain oath. The House of Commons have resolved that he shall not be permitted to take it. *Grant, for the purposes of argument, that the resolution of the House and the Parliamentary Oaths Act contradict each other; how can we interfere without violating the principle just referred to? Surely the right of the plaintiff to take the oath in question is "a matter arising concerning the House of Commons," to use the words of Blackstone. The resolution to exclude him from the House is a thing "done within the walls of the House," to use Lord Denman's words. It is one of those "proceedings in the House of which the House of Commons is the sole judge," to use the words of Littledale, J. It is a "proceeding of the House of Commons in the House," and must therefore, in the words of Patteson, J., "be entirely free and unshackled." It is "part of the course of its own proceedings," to use the words of Coleridge, J., and is therefore "subject to its exclusive jurisdiction."* These authorities are so strong and simple that there may be some risk of weakening them in adding to them. Nevertheless, the importance of the case may excuse some further exposition of the principle on which it seems to me to depend.

The Parliamentary Oaths Act prescribes the course of proceeding to be followed on the occasion of the election of a member of Parliament. In order to raise the question now before us, it is necessary to assume that the House of Commons has come to a

> resolution inconsistent with the Act; for, if the resolution and the Act are not inconsistent the plaintiff has obviously no grievance. We must of course face this supposition, and give our decision upon the hypothesis of its truth. But it would be indecent and improper to make the further supposition that the House of Commons deliberately and intentionally defies and breaks the statute law. The more decent and I may add the more natural and probable supposition is, that, for reasons which are not before us, and of which we are therefore unable to judge, the House of Commons considers that there is no inconsistency between the Act and the resolution. They may think there is some implied exception to the Act. They may think that what the plaintiff proposes to do is not in compliance with its directions. With this we have nothing to do. Whatever may be the reasons of the House of Commons for their conduct; it would be impossible for us to do justice without hearing and considering those reasons; but it would be equally impossible for the House, with any regard for its own dignity and independence, to suffer its reasons to be laid before us for that purpose, or to accept our interpretation of the law in preference to its own. *It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly.* (emphasis added)

[30] *Bradlaugh v. Gossett's* principle was applied by the court in *Dingle v. Associated Newspapers Ltd* [1960] 2 QB 405. In *Dingle* the validity of the report of a Select Committee was questioned on the ground that its procedure was defective. Pearson J when remarking that such challenge was outside the scope of the court's inquiries said:

> In the opening speech something was said which indicated, or seemed to indicate, that there was going to be an attack on the report of the select committee of the House of Commons, and that the attack was, perhaps, to be carried to the extent of impugning the validity of the report, on the ground of some defect of procedure ... Reference was made to the Bill of Rights, 1688, s. 1, art. 9, on freedom of speech, which provides: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."
>
> *Reference was also made to Bradlaugh v. Gossett, and it is sufficient to read a short portion of the headnote: "The House of Commons is not subject to the control of Her Majesty's Courts in its administration of that*

part of the statute law which has relation to its internal procedure only. What is said or done within its walls cannot be inquired into in a court of law. A resolution of the House of Commons cannot change the law of the land. But a court of law has no right to inquire into the propriety of a resolution of the House restraining a member from doing within the walls of the House itself something which by the general law of the land he had a right to do." There is a clear affirmation of the exclusive right of Parliament to regulate its own internal proceedings.

That was one of the points put forward and, in my view, it is quite clear that to impugn the validity of the report of a select committee of the House of Commons, especially one which has been accepted as such by the House of Commons by being printed in the House of Commons Journal, would be contrary to section I of the Bill of Rights. No such attempts can properly be made outside Parliament.

The next point was that the Solicitor-General and Mr. Cumming-Bruce made a submission or a request that no comment on the report should be permitted in the course of the trial. That, as a matter of construction of the relevant provision in the Bill of Rights might have raised a more debatable question, but it seemed quite clear at the time, and still is clear, to my mind, that it was easy to give effect to that request because, once the question of the validity of the report had been excluded as outside the scope of the court's inquiries, any comment on the report, or how it was obtained, and the proceedings leading up to it, would have little or no materiality: indeed, to a large extent, any such comment would not be relevant at all. (emphasis added)

[31] Learned counsel for the respondents submitted that the appellants and the High Court had relied heavily on the principle enunciated in *Bradlaugh v. Gossett* and *Stockdale v. Handsard*. He submitted that the observations of the court in both of these cases were made in the context of *lex constuedo* of a supreme Parliament, and that in Malaysia there was no concept of supremacy of Parliament. We have not lost sight of the fact that the doctrine of the supremacy of Parliament does not apply in Malaysia and that in Malaysia the Constitution is supreme (see *Ah Thian v. Government of Malaysia* and *Dato' Dr Zambry's* case). In Malaysia the fundamental constitutional principle is the supremacy of the Constitution.

[32] Under the Federal Constitution, privileges of Parliament are provided under art. 63:

Privileges of Parliament

63. (1) *The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court.*

(2) No person shall be liable to any proceedings in any court in respect of anything said or any vote given by him when taking part in any proceedings of either House of Parliament or any committee thereof.

(3) No person shall be liable to any proceedings in any court in respect of anything published by or under the authority of either House of Parliament.

(4) Clause (2) shall not apply to any person charged with an offence under the law passed by Parliament under Clause (4) of Article 10 or with an offence under the Sedition Act 1948 [Act 15] as amended by the Emergency (Essential Powers) Ordinance No. 45, 1970 [P.U. (A) 282/70].

(5) Notwithstanding Clause (4), no person shall be liable to any proceedings in any court in respect of anything said by him of the Yang di-Pertuan Agong or a Ruler when taking part in any proceedings of either House of Parliament or any committee thereof except where he advocates the abolition of the constitutional position of the Yang di-Pertuan Agong as the Supreme Head of the Federation or the constitutional position of the Ruler of a State, as the case may be.

[33] Similar principles are applied to the State Legislative Assemblies as provided for under art. 72 of the Federal Constitution:

Privileges of Legislative Assembly

72. (1) *The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.*

(2) No person shall be liable to any proceedings in any court in respect of anything said or any vote given by him when taking part in proceedings of the Legislative Assembly of any State or of any committee thereof.

(3) No person shall be liable to any proceedings in any court in respect of anything published by or under the authority of the Legislative Assembly of any State.

(4) Clause (2) shall not apply to any person charged with an offence under the law passed by Parliament under Clause (4) of Article 10 or with an offence under the Sedition Act 1948 as amended by the Emergency (Essential Powers) Ordinance No. 45, 1970.

A (5) Notwithstanding Clause (4), no person shall be liable to any proceedings in any court in respect of anything said by him of the Ruler of any State when taking part in any proceedings of the Legislative Assembly of any State or any committee thereof except where he advocates the abolition of the Ruler's position as the constitutional Ruler of that State.

B

[34] It is clear that from the aforesaid articles that the privilege of freedom of speech in Parliament (provided for under art. 63(2)) and the privilege of freedom of speech in the State Legislative Assemblies (provided for under art. 72(2)) are subject to the C limitation provided for under art. 63(4) and art. 72(4) respectively that they shall not apply to any person charged with an offence under the law passed by Parliament under art. 10(4) of the Federal Constitution. Under that article, Parliament may pass law prohibiting the questioning of any matter, right, status, position, D privilege, sovereignty or prerogative established or protected by the provisions of Part III, art. 152, 153 or 181 of the Federal Constitution otherwise than in relation to the implementation thereof as may be specified in such law. The privileges provided under art. 63(2) and art. 72(2) of the Federal Constitution also E shall not apply to any person charged with an offence under the Sedition Act 1948 as amended by the Emergency (Essential Powers) Ordinance No. 45, 1970.

[35] The effect of art. 63(1) and art. 72(1) of the Federal F Constitution can be demonstrated by reference to a number of established authorities.

[36] In *Fan Yew Teng v. Government of Malaysia* [1976] 1 LNS 28; [1976] 2 MLJ 262, the plaintiff, a member of Parliament, G applied for various declarations arising out of his conviction for sedition and a fine of $2,000 imposed on him by the High Court (*PP v. Fan Yew Teng* [1975] 1 LNS 127; [1975] 1 MLJ 176). A motion was introduced in the Dewan Rakyat that the question whether the plaintiff had become disqualified for membership of the H house, be referred to the Committee of Privileges. The plaintiff sought declarations to the effect that he had a right to exhaust his legal right of appeal and to petition the Yang Di-pertuan Agong for a pardon, before the Dewan Rakyat could take a decision regarding his disqualification and that it was only the I Dewan Ra'ayat and not the Committee of Privileges which could delve into the question as to his disqualification. It was held that the decision on the issue of disqualification was for the Dewan

Rakyat to make and when made it was final and could not be questioned in any court. It was further held that the court could not interfere with the right of the Dewan Rakyat to make a decision on the question of the plaintiff being disqualified from membership and the reliefs sought by the plaintiff were outside the jurisdiction of the court. In his judgment Chang Min Tat J (as he then was) said:

> The issue in his application is the right of the plaintiff to sit in the Dewan Ra'ayat and, in my view and with respect, this issue comes fully within the compass of Article 53 and Article 63. The issue therefore involves the proper and reasonable construction of these Articles. The language is plain and unambiguous. *Giving the words therein their plain and grammatical meaning, the decision on this issue is for the House to take, it is final when taken and the validity of the proceedings cannot be questioned in any court. These Articles can admit of no other construction.* (emphasis added)

[37] In *Inspector-General of Police & Anor v. Lee Kim Hoong* [1979] 1 LNS 34; [1979] 2 MLJ 291, on the issue of whether or not the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 had been laid before Parliament, Suffian LP delivering the judgment of the Federal Court said:

> We refused Mr. K. Pasupathy leave to cross-examine Encik Ghazali on his affidavit. He said he wanted to ask Encik Ghazali what happened after a paper had been laid before Parliament. We did not think this evidence relevant. In any event, **Article 63(1) of the Constitution provides**:
>
> *The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court.*
>
> *This means that if records kept by Parliament show that a paper had been laid, that is conclusive as far as the courts are concerned.* (emphasis added)

[38] In *Lim Cho Hock v. Speaker, Perak State Legislative Assembly (supra)*, the effect of art. 72(1) of the Federal Constitution was in issue before the court. In that case, the applicant, a member of the Perak State Legislative Assembly, applied by Originating Summons for the determination of the question whether the seat of a member of the Legislative Assembly, who was also the Speaker, had been vacated as he had not taken the oath required of a member. The respondents applied to set aside the originating summons on the grounds *inter alia* (1) that the application was not maintainable in law and procedure and (2)

that the court had no jurisdiction to entertain the application as the reliefs sought were exclusively within the jurisdiction of the Legislative Assembly of the State of Perak. In his judgment, Abdoolcader J (as he then was) applied the principle of the non justiciability of the Legislative Assembly's intra-mural activities enunciated in *Bradlaugh v. Gossett*, and that only Parliament was competent to regulate and for that purpose judge the validity of its intra-mural activities. The learned judge said:

> I have already referred to the provisions of Article 72(1) of the Federal Constitution which might perhaps also affect the position as well, as the originating summons in raising the matter of the 1st respondent not having taken the oath as a member of the Assembly although he had in fact taken the oath as Speaker after his election as such under Standing Order 1(c) of the Assembly's Standing Orders might **appear in effect to question the validity of the internal proceedings of the Assembly.**
>
> *In the light of these constitutional provisions, it is clear that the two matters raised in these proceedings are for the Assembly to decide and within its exclusive jurisdiction, and not for the courts to determine.*
>
> *Under the lex et consuetudo parliamenti, the Assembly has control over its proceedings, procedure and members and may decide questions as to their qualifications and disqualification. The provisions in the Federal and State Constitutions I have discussed crystallise and encapsulate this important principle of nonjusticiability of its intra-mural activities in the courts which may perhaps be appropriately termed the Bradlaugh principle, highlighted in Bradlaugh v. Gossett (1884) 12 QBD 271* as a result of the House of Commons in England preventing an elected atheist from exercising his statutory right of making the member's oath by affirmation. The oath being a precondition to the right to participate in proceedings of the House, the plaintiff was thus prevented from taking his seat. *The court ruled that the matter was not justiciable before it – only Parliament was competent to regulate and for that purpose judge the validity of its intra-mural activities*. I should perhaps add as a corollary to that case that the plaintiff's electorate disagreed with Parliament – he was elected five times in as many years, and it was only on the last occasion that he was allowed to take his seat. (emphasis added)

[39] *Bradlaugh v. Gossett* was referred to by the House of Lords in *Hamilton v. Al Fayed* [2001] 1 AC. In that case, Lord Browne-Wilkinson in his judgment (with which the four other members of the court agreed) summed up parliamentary privilege in England established by long line of authorities including *Bradlaugh v. Gossett*, *Stockdale v. Hansard*, *Pickin v. British Railway Board* and *Pepper v. Hart* as follows:

Parliamentary privilege

1. Generally

Article 9 of Bill of Rights 1689 (Will & Mary sess 2 c 2) provides:

That the freedom of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament." It is well established that article 9 does not of itself provide a comprehensive definition of parliamentary privilege. In *Prebble v. Television New Zealand Ltd* [1995] 1 AC 321, 332 I said:

> *In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article is merely one manifestation, viz that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges: Burdett v Abbott* (1811) 14 East I; *Stockdale v Hansard* (1839) 9 Ad & EC I; *Bradlaugh v Gossett* (1884) 12 QBD 271; *Pickin v British Railways Board* [1974] AC 765; *Pepper v Hart* [1993] AC 593. As Blackstone said in his Commentaries on the *Laws of England*, 17th ed (1830), vol, p 163: *"the whole of the law and custom of Parliament has its origin from this one maxim, that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere."* (emphasis added)

[40] Thus, in His Lordship's judgment it was firmly established that:

> ... courts are precluded from entertaining in any proceedings (whatever the issue which may be at stake in those proceedings) evidence, questioning or submissions designed to show that a witness in parliamentary proceedings deliberately misled Parliament. To mislead Parliament is itself a breach of the code of parliamentary behaviour and liable to be disciplined by Parliament: see *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522 and *Pickin v British Railways Board* [1974] AC 765, 800, per Lord Simon of Glaisdale. *For the courts to entertain a question whether Parliament had been deliberately misled would be for the courts to trespass within the area in which Parliament has exclusive jurisdiction.*

[41] Article 9 of the Bill of Rights provides the principle that, "the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place out Parliament". In the context of the State of Selangor similar principle had been enacted under para. 2 in the Schedule to the Selangor Constitution. This is in addition to art. 72(1) of the Federal Constitution which has encapsulated the non justiciability of the intra-mural activities of the State Legislature. The provision under para. 2 of the Schedule to the Selangor Constitution (which is also in the Constitutions of the States Johore, Kelantan and Terengganu) provides:

> There shall be freedom of speech and debate or proceedings in the Assembly and such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any Court or tribunal out of the Assembly.

[42] In our view, the phrase "there shall be freedom of speech and debate or proceedings in the Assembly" guarantees the freedom of speech, debate and proceedings in the SLA. The second part of the Article provided by the phrase "such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any court or tribunal out of the Assembly", guarantees the independence and non justiciability of the freedom of speech, debate and proceedings in the SLA. The aforesaid guarantee is fortified by para. 3 in the Schedule to the Selangor Constitution which provides:

> No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of any matter or thing which he may have brought by petition, bill, resolution, motion, or otherwise, or have said before the Assembly or any committee.

[43] In other words, in the context of the present case, subject to the limitation provided for under the Federal Constitution, no member of the SLA shall be liable to any civil or criminal proceedings by reason of any matter or thing which he may have brought by resolution, motion or otherwise, or have said before the SLA or any committee. The key words which trigger the immunity provided for in para. 2 in the Schedule to the Selangor Constitution or under art. 72(1) of the Federal Constitution are "proceedings in the Assembly". In *Dato' Dr Zambry*, when explaining the meaning of the words, "proceedings in the legislative Assembly," this court said:

"The operative words in the provision are '... proceedings in the Legislative Assembly ...'. In considering the meaning of the expression 'proceedings in Parliament' Parliamentary Practice (20th Ed) by Erskine May says at p 92:

> The primary meaning, as a technical parliamentary term, of 'proceedings' (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principle part of which is debate, by which it reaches a decision.
>
> An individual Member takes part in a proceeding usually by speech, but also by various recognised kinds of formal action, such as voting, giving notice of a motion, etc, or presenting a petition or a report from a Committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers also can take part in the proceedings of a House, eg by giving evidence before it or before one of its committees, or by securing the presentation of their petitions.
>
> While taking part in the proceedings of a House, members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.

[44] Parliamentary privilege and art. 9 of the Bill of Rights came up for consideration of a nine-member bench of the English Supreme Court in *R v. Chaytor* [2010] 3 WLR 1707. The headnotes of the case reveal the following facts. The defendants were committed for trial in the Crown Court charged with false accounting under s. 17(1)(b) of the Theft Act 1968 in respect of allegedly dishonest claims for expenses and allowances made while they were serving Members of Parliament. They had submitted their claim in the prescribed form to the Fees Office of the House of Commons under the scheme for expenses and allowances provided by resolution of the House of Commons and operated by administrative staff under the supervision of committees of the House. The defendants each claimed that criminal proceedings could not be brought against them since their claims for expenses and allowances, which enabled them to carry out parliamentary

business, were protected by parliamentary privilege as part of "proceedings in Parliament" for the purposes of art. 9 of the Bill of Rights 1689 and under the exclusive cognisance of Parliament to regulate its own internal affairs. At a preparatory hearing held under the Criminal Procedure and Investigations Act 1996 the judge ruled against the defendants and directed that they stand trial. On appeal the Court of Appeal concluded that the submission of allegedly dishonest claims did not constitute "proceedings in Parliament" but amounted, if proved, to an ordinary crime to which parliamentary privilege did not attach. It was held (dismissing the defendants' appeal) that art. 9 was primarily directed to freedom of speech and debate in the houses of Parliament and in parliamentary committees where the essential business of Parliament took place and the article only applied to parliamentary proceedings which were recognisable as part of the formal collegiate activities of Parliament; that actions outside the houses and committees would fall within such proceedings only where they bore a sufficiently close relationship to them and the failure of privilege to attach to such actions might adversely impact on the essential business of Parliament; that the submission of the defendants claims was an incident of the administration of Parliament, not part of its proceedings, and scrutiny by the courts would have no adverse effect on its essential business nor inhibit debate or freedom of speech or any other activities bearing on members' parliamentary duties; and that, accordingly, the defendants could not rely on art. 9. In his leading speech, Lord Phillips of Worth Matravers, PSC said:

> *The jurisprudence to which I have referred to is sparse and does not bear directly on the facts of these appeals. It supports the proposition, however, that the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place*. In considering whether **actions outside the Houses and committees** fall **within parliamentary proceedings** because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy **privilege**, this is likely to impact adversely on the core or essential business of Parliament. (emphasis added)

[45] It is clear to us that firstly, the freedom of speech and debate in Parliament and in its committees are protected by parliamentary privilege as this is where the core or essential business of Parliament, takes place. In other words, for the

purpose of protection of parliamentary privilege apart from proceedings in the Houses of Parliament, proceedings in parliamentary committees are also "proceedings in Parliament". Secondly, even actions outside Parliament and its committees may fall within parliamentary proceedings because of their connection to them (and qualify for the protection of privilege). However, it is necessary to consider the nature of the connection between those actions and Parliament or its committees, and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament. Adopting the aforesaid approach to the case before the court, his Lordship concluded:

> If this approach is adopted, the submission of claim forms for allowances and express does not qualify for the protection of privilege. Scrutiny of claims by the courts will have no adverse impact on the core or essential business of Parliament, it will not inhibit debate or freedom of speech. Indeed it will not inhibit any of the varied activities in which Members of Parliament indulge that bear in one way or another on their parliamentary duties. The only thing that it will inhibit is the making of dishonest claims.

[46] From his Lordship judgment it is also clear that the courts will respect the right of each House of Parliament to make its own decision in relation to the conduct of its internal affairs:

> Different considerations apply to claims for judicial review in relation to the conduct by each House of its internal affairs. *The courts will respect the right of each House to reach its own decision in relation to the conduct of its affairs*. Two examples will illustrate this. In *re McGuiness's Application* [1967] NI 359 the applicant sought to challenge by judicial review the decision of the Speaker that those who had not complied with the requirements of the Parliamentary Oaths Act 1866 would be denied certain of the facilities of the House. Kerr J dismissed his application. He held, at p 366:
>
> > I am quite satisfied that, whether it *qualifies as a proceeding in Parliament or not, the Speaker's action lies squarely within the realm of internal arrangements of the House of Commons and is not amenable to judicial review*.
>
> In *R v. Parliamentary Comr for Standards, Ex p Al Fayed* [1998] 1 WLR 669 the Parliamentary Commissioner for Standards had published a report relating to a complaint by the applicant against a Member of Parliament. The applicant sought permission to

challenge this by judicial review. The application was refused by Sedley J and renewed before the Court of Appeal. Lord Woolf MR gave a judgment with which the other members of the Court agreed dismissing the application. He said, at p 673:

> the focus of the Parliamentary Commissioner for Standards is on the propriety of the workings and the activities of those engaged within Parliament. *He is one of the means by which the select committee set up by the House carries out its functions, which are accepted to be part of the proceedings of the House. This being the role of the Parliamentary Commissioner for Standards, it would be inappropriate for this court to use its supervisory powers to control what the Parliamentary Commissioner for Standards does in relation to an investigation of this sort.* The responsibility for supervising the Parliamentary Commissioner for Standards is placed by Parliament, through its Standing Orders, on the Committee of Standards and Privileges of the House, and it is for that body to perform that role and not the courts. (emphasis added)

[47] In our view, applying the reasoning in *R v. Chaytor*, "proceeding in the assembly" under para. 2 in the Schedule to the Selangor Constitution and "proceedings in the Legislative Assembly" under art. 72(1) of the Federal Constitution include proceedings in SELCAT, being a committee established by the SLA. To adopt the words of Lord Phillips in *R v. Chaytor*, this is where (in addition to proceedings in the SLA itself), the core or essential business of the SLA takes place. Thus the protection of privilege enjoyed by the SLA also extends to SELCAT. Indeed in *Hj Salleh Jafaruddin*, Wan Hamzah SCJ held that the proceedings of the Committee of Privileges of the Dewan Undangan Negeri Sarawak formed part of the proceedings of the Sarawak State Legislative Assembly. In that case dealing with the issue whether leave to apply for a writ of prohibition to restrain the respondents – the members of the Committee of Privileges of the Sarawak Legislative Assembly from proceeding with the enquiry for alleged breach of privileges by the appellant in respect of a speech at a sitting of the Assembly, Wan Hamzah SCJ in his judgment said:

> *On the question whether leave to apply for an order of prohibition should be granted, in my opinion Article 72(1) of the Federal Constitution applies in this case and is conclusive. That Article provides:*
>
> > *The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.*

The Legislative Assembly includes the Dewan Undangan Negeri Sarawak, *vide* Article 160(2) of the Federal Constitution.

The appellant asked for leave to apply for an order to prohibit the respondents as members of the Committee of Privileges of the Dewan Undangan Negeri Sarawak "from investigating or adjudicating upon a charge of an alleged breach of privilege of the Dewan Undangan Negeri Sarawak allegedly committed by the applicant (i.e. the appellant) on May 16, 1985". The alleged breach of privilege was the uttering of certain statements while making a speech at the sitting of the Dewan on that date. The grounds for asking for the leave were stated as follows:

(a) any adjudication by the Committee of Privileges as presently constituted by the Respondents, in particular the Second, Fourth and Seventh Respondents, **will be in excess of jurisdiction** in that the Respondents have threatened to act and will, unless prohibited by this Honourable Court, **act in breach of the rules of natural justice**;

(b) Respondents functioning as the Committee of Privileges of the Dewan Undangan Negeri Sarawak are under a duty to act constitutionally and fairly but have threatened to **act in contravention of Article 8 of the Federal Constitution and/or in breach of the rules of natural justice**;

(c) the Second, Fourth and Seventh Respondents are predisposed against the Applicant so that any proceedings or adjudication by the Committee of Privileges of the Dewan Undangan Negeri Sarawak of which the Second, Fourth and Seventh Respondents are members will, in the result, be **contrary to law and a nullity**;

(d) the Respondents having in the purported exercise of their discretion denied the Applicant legal representation at the hearing aforesaid, the proceedings or adjudication of the Committee of Privileges will be a nullity by reason of the law and/or the provisions of the Federal Constitution.

It is clear that the above grounds touch on the question of the validity of the proceedings to be taken by the Committee of Privileges. That Committee was a committee nominated under O. 69(5) of the Standing Orders of the Dewan. Article 24(1) of the Constitution of the State of Sarawak provides:

> Subject to the provisions of this Constitution, the Dewan Undangan Negeri shall regulate its own procedure and may make Standing Orders for that purpose.

> Is clear that the Standing Orders have been made for the purpose of regulating the procedure for the proceedings of the Dewan and *that the proceedings of the Committee of Privileges form part of the proceedings of the Dewan. Therefore to question the validity of the proceedings of the Committee of Privileges is to question the validity of the proceedings of the Dewan, and to do so in the court is forbidden under Article 72(1) of the Federal Constitution*.

[48] Reverting to the declaration sought in the originating summons, in prayer (1), although the composition of SELCAT was challenged, what was effect questioned was the validity of the resolution of the SLA (establishing SELCAT) made in exercise of its collective and deliberative functions. The resolution was passed without any objection pursuant to a motion made in the meeting of the SLA. What was done by the SLA was done in the proceedings of the Assembly, the validity of which could not be impeached or questioned in any court or tribunal out of the Assembly in the light of art. 72(1) of the Federal Constitution and the para. 2 in the Schedule to the Selangor Constitution and the authorities we have adverted to. What was done by the SLA was therefore non justiciable.

[49] In respect of prayer (ii), although the averment was that SELCAT acted in breach of Standing Order 75 of the Standing Orders, what SELCAT did in conducting its hearing publicly and in allowing the publication of its report concerning the proceedings prior to the presentation of its formal report to the SLA, was pursuant to and authorised by the resolution passed by the SLA. So, again what in effect the respondents sought to impeach or question in court was the validity of that resolution made in proceedings of the SLA. This cannot be done in the light of art. 72(1) of the Federal Constitution and para. 2 in the Schedule to the Selangor Constitution and the authorities cited. The issue raised in prayer (ii) is thus non justiciable. Additionally and/or alternatively, applying *R v. Chaytor*, *Bradlaugh v. Gossett* and *Hj Salleh Jafaruddin*, the impugned conduct and proceedings of SELCAT were "proceedings in the Assembly" under para. 2 in the Schedule to Selangor Constitution and art. 72(1) of the Federal Constitution. Hence the protection of the privilege under those provisions extends to the impugned proceedings of SELCAT. The validity of these proceedings cannot be impeached or questioned in court. The matter raised in the prayer is therefore not justiciable.

[50] In prayer (iii), although a declaration is sought against all proceedings of SELCAT because the first defendant as Chairman of SELCAT was alleged to be in the situation of conflict by reason of his position as Speaker of the SLA as well as the Chairman of the Privileges Committee of the SLA, what in effect is being impeached or questioned is the validity of the resolution of the SLA in establishing SELCAT. This is because it was pursuant to that resolution that the first defendant was appointed the Chairman of SELCAT. The answer is again in art. 72(1) of the Federal Constitution and para. 2 in the Schedule to the Selangor Constitution. That resolution being made by the SLA in the exercise of its collective and deliberative functions, was clearly one made in proceedings of the Assembly. Thus its validity is not amenable to judicial review. The issue raised in prayer (iii) therefore is not justiciable. Applying *R v. Chaytor* and *Hj Salleh Jafaruddin*, the impugned proceedings of SELCAT were "proceedings in the Assembly" under para. 2 in the Schedule to Selangor Constitution and art. 72(1) of the Federal Constitution. The protection of the privilege under those provisions therefore extends to the impugned proceedings of SELCAT. These proceedings cannot accordingly be impeached or questioned in court.

[51] Moreover, in *Hj Salleh Jafaruddin (supra)* the application for leave to apply for an order of prohibition was refused in the High Court. The ground for asking for leave were as follows:

(a) any adjudication by the Committee of Privileges as presently constituted by the Respondents, in particular the Second, Fourth and Seventh Respondents, will be in excess of jurisdiction in that the Respondents have threatened to act and will, unless prohibited by this Honourable Court, **act in breach of the rules of natural justice**;

(b) Respondents functioning as the Committee of Privileges of the Dewan Undangan Negeri Sarawak are under a duty to act constitutionally and fairly but have threatened to act in **contravention of Article 8 of the Federal Constitution and/or in breach of the rules of natural justice**;

(c) the Second, Fourth and Seventh Respondents are predisposed against the Applicant so that any proceedings or adjudication by the Committee of Privileges of the Dewan Undangan Negeri Sarawak of which the Second, Fourth and Seventh Respondents are members will, in the result, be contrary to law and a nullity;

A (d) the Respondents having in the purported exercise of their discretion denied the Applicant legal representation at the hearing aforesaid, the proceedings or adjudication of the Committee of Privileges will be a nullity by reason of the law and/or the provisions of the Federal Constitution.

B On appeal, the appeal was dismissed by the Supreme Court. Seah SCJ in his judgment said:

> Some forty-two years later in *R. v. Electricity Commissioners* Atkin L.J. echoed the view of Brett L.J. in the much quoted passage which reads:
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> > wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and **having the duty to act judicially, act in excess of their legal authority** they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs (prohibition and *certiorari*)".
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> In *O'Reilly and Mackman* Lord Diplock observed:
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> > For the next 40 years this phrase (of Atkin L.J.) gave rise to many attempts, with varying success, to draw subtle distinctions between decisions that were quasi-judicial and those that were administrative only. But the relevance of arguments of this kind was destroyed by the decision of this House in *Ridge v. Baldwin* [1964] A.C. 40 where again the leading speech was given by Lord Reid.
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> However, Lord Diplock reiterated that:
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> > Wherever any person or body of persons has authority conferred by legislation to make decisions of the kind I have described, it is amenable to the remedy of an order to quash its decision either for error of law in reaching it or for failure to act fairly towards the person who will be adversely affected by the decision by failing to observed either one or other of the two fundamental rights afforded to him by the rules of natural justice or fairness, *viz*, to have afforded to him a reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it, and to the absence of personal bias against him on the part of the person by whom the decision falls to be made ...
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> I Having regard to these authorities it may be observed that originally the writ of prohibition was directed to courts of inferior jurisdiction and the writ was normally used to control lower

courts acting in excess of their jurisdiction or in contravention of law. However, it was later extended by the superior court to statutory bodies exercising such legal jurisdiction when they were brought into existence by Acts of Parliament. The same principle would apply to any person or a body of persons conferred with such jurisdiction by any enactment passed by a State legislature. *However, it is plain that the Committee of Privileges of the Dewan Undangan Negeri Sarawak are not such a body of persons. Members of Committee of Privileges are nominated by the Dewan Undangan Negeri Sarawak under Standing Order 69(5)(a) at the beginning of each session, and the Speaker shall be Chairman of the Committee of Privileges.* It is not disputed that the Standing Orders are enacted under Article 24(1) of the State Constitution of Sarawak. *The function of the Committee is to consider all matters which shall be referred to it concerning the privileges and powers of the Dewan and to report the same from time to time to the Dewan. In my opinion, the Committee are an investigating body of the Dewan. That the Committee have no decision-making power is made clear by Standing Order 69(5)(d) which provides:*

> As soon as any report of the Committee has been laid on the Table and circulated to members, a Minister may give notice of a motion expressing the opinion of the Dewan with regard to the matter of the report, and any such motion shall, on the day for which notice of it is given, have precedence over all public business other than proceedings under Standing Orders 65 to 68 inclusive.

Students of English constitutional history are well aware of the controversy which attended the establishment of the powers, privileges and immunities of the House of Commons resulting in 1840 by judicial declarations terminating that controversy [see *Stockdale v. Hansard*]. *For over a century or more both Parliament and the Courts in England have been careful not to act so as to cause conflict between them. In my judgment, unless compelled to do so by clear authority and none had been cited by learned counsel for the appellant, I would not be prepared to enlarge the supervisory jurisdiction of the superior court by extending the writ or order of prohibition to a Committee of Privileges of the Dewan Undangan Negeri of Sarawak when acting as an investigating body.* Anyway, it appears to me that the whole trend of authorities since 1882 is clearly against such extension. (emphasis added)

[52] So too here. SELCAT was an investigative body of the SLA. It has no decision making power. Its function was to carry out investigations upon the matters referred to it by the SLA and submit a report to the SLA. This is clear from Standing Order 76(1) of the Standing Order:

> 76. (1) Every Select Committee shall make a report to the Assembly upon the matters referred to them before the end of the session in which the Committee was appointed, but if a Committee finds itself unable to conclude **its investigations** before the session, it may so report to the Assembly.

[53] The supervisory jurisdiction of the superior courts does not extend to SELCAT given the nature of its function as investigative body of the SLA. It is not amenable to an order to quash its proceedings on account of the alleged breach of the rules of natural justice. This is another reason to support the non justiciability of the issue raised in prayer (iii) of the Originating Summons.

[54] In alternative prayer (iv), the complaint is that SELCAT had acted in excess of its jurisdiction because in carrying out its functions and proceedings SELCAT inquired into matters reserved to Public Accounts Committee under Standing Order 68(1)(b) and (d) of the Standing Orders. Again, applying *R v. Chaytor*, *Bradlaugh v. Gossett* and *Hj Salleh Jafaruddin*, the impugned functions and proceedings of SELCAT were "proceedings in the Assembly" under para. 2 in the Selangor Constitution and art. 72(1) of the Federal Constitution. The protection of the privilege under those provisions applies and the validity of these proceedings cannot be impeached or questioned in court.

[55] The issue raised in prayer (v) overlaps 5 with the issue raised in prayer (iv). The complaint here is that the matters deliberated by SELCAT exceeded the scope of the matters referred to it by the SLA rendering the proceedings null and void contrary to Standing Order 73(4) of the Standing Order which provides as follows:

> 73. (4) The deliberations of a Select Committee shall be confined to the matter referred to it by the Assembly and any extension or limitation thereof made by the Assembly and, in the case of a Select Committee on a Bill, to the Bill committed to it and relevant amendments.

[56] However, as has been demonstrated, the impugned proceedings of SELCAT were "proceedings in the Assembly" under art. 72(1) of the Federal Constitution and para. 2 in the Schedule to the Selangor Constitution. The protection of privilege under those provisions accordingly applies and the validity of these proceedings cannot be impeached or questioned in court. We

hasten to add that as the matter raised in prayer (v) concerns proceeding in the Assembly, it ought to be examined, discussed and adjudged in the SLA and not anywhere else (see *Hamilton v. Al Fayed*, *per Lord Browne-Wilkinson (supra)*, *British Railways Board v. Pickin (supra)* per Lord Wilberforce and Lord Simon of Glaisdale).

[57] For the foregoing reasons we are of the view that the matters raised in the originating summons are not justiciable.

[58] This brings us to the case of *Dato' Dr Zambry*. In that case, on 6 February 2009, YAB Dato' Dr Zambry bin Abd Kadir, the first applicant, was sworn in as the Menteri Besar of Perak in place of YB Dato Seri Mohammad Nizar Jamaluddin ('Nizar'). The first applicant then proceeded to appoint the second to seventh applicants as his Executive Council Members ('the EXCO members') and on 10 February 2009 the said applicants were accordingly sworn in as State Executive Councillors of Perak. On 11 February 2009, the Assemblyman from Taman Canning wrote to the Speaker of the State Legislative Assembly of Perak, the respondent, complaining that the applicants had committed acts of contempt against the State Legislative Assembly of Perak. Based on this complaint the respondent issued a summons, pursuant to Standing Order 72 of the Standing Orders of the State Assembly of Perak (Standing Order 72), to the applicants requiring them to attend before the Committee of Privileges (the committee) on 18 February 2009 to answer to a charge of breach of privileges. The breach of privileges complained of arose from alleged acts of contempt committed by the applicants. The alleged acts of contempt were that the first applicant had wrongly held himself out as Menteri Besar of Perak and had acted illegally by appointing the other applicants as EXCO members, and that the other applicants wrongly held themselves out as EXCO members, contrary to the provisions of the Perak Constitution while the legally appointed Menteri Besar of Perak, Nizar, and his EXCO were still in office. The applicants appeared before the committee and their answer to the charge was that they did not recognise or submit to the committee's jurisdiction. On 19 February, the committee found the applicants guilty of contempt and suspended the first applicant from attending the sessions of the State Assembly for a period of 18 months and the other applicants for a period of 12 months. The applicants thereafter filed an originating summons in the High Court seeking, *inter alia*, orders for a declaration that the decision of the respondent in suspending

them from attending the State Legislative Assembly for a period of 18 months and 12 months respectively was against the Constitution of Perak and therefore null and void. The applicants then filed a notice of motion in the Federal Court for certain questions to be answered pursuant to art. 63 of the Constitution of Perak. These questions involved, *inter alia*, a consideration of whether the respondent's decision in suspending the applicants from attending the State Legislative Assembly was null and void. (See [2009] 4 MLJ 24-26). In determining the justiciability of the orders sought by the applicants, the scope of art. 72(1) of the Federal Constitution was considered by this court. It held that art. 72(1) must be read as being subject to the existence of a power or jurisdiction, be it inherent or express by provided for to do whatever that has been done:

> It follows that **art 72(1) must be read as being subject to the existence of a power or jurisdiction**, be **it inherent or expressly provided** for, to do whatever that has been done. *The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the applicants are therefore justiciable.* It now becomes necessary to ascertain whether there was any power to authorize the suspension of the applicants on account of the alleged contempt committed by them …

[59] This court then arrived at the following conclusion:

> [57] Standing Order 72(1) authorises the Committee of Privileges to take cognizance of '... any matter which appears to affect the powers and privileges of the Assembly ...'. In order for a '... matter ...' to have such an effect it must be unlawful or be an infringement of the powers and privileges of the Assembly. It is only then that it can be said that it appears to affect the powers and privileges of the Assembly. The summonses against the applicants state that their acts constitute contempt. As contempt has not been specifically prescribed for, the act cannot come within the ambit of Standing Order 72(1). Even the Legislative Assembly (Privileges) Enactment 1959 enacted by the Perak Legislative Assembly does not contain any provision for the offence of contempt and its punishment. By way of contrast reference must be made to the House of Parliament (Privileges and Powers) Act 1952 which makes specific provision for contempt.
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> [58] The corollary is that Article XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and the Legislative Assembly (Privileges)

Enactment 1959 do not provide for the offence of contempt and the resultant punishment of suspension from attending sessions of the State Legislative Assembly.

[59] In the upshot the suspension of the applicants on account of the alleges contempt committed by them is null and void.

[60] It is true that in *Dato' Dr Zambry*, this court held that art. 72(1) of the Federal Constitution must be read as being subject to the existence of a power or jurisdiction (be it inherent or expressly provided for) to do whatever that has been done, and that the court was empowered to ascertain whether the power that has been claimed has been provided for, rendering the issues raised by the applicants in that case justiciable. However, in our view, the decision in *Dato' Dr Zambry* should be read in the factual context of that case. That case concerns the resolution of the Perak Legislation Assembly suspending the applicants as punishment for contempt allegedly committed by them. It is clear that the alleged acts of contempt against the first applicant (holding himself out as Menteri Besar) and the other applicants (holding themselves out as Exco Members) for which they were suspended from the Perak Legislative Assembly, were acts committed beyond the walls of the Legislative Assembly. Those acts alleged to constitute contempt had not been provided for under the Perak State Constitution, the Standing Orders or the Perak Legislative Assembly (Privileges) Enactment 1959. At the outset of its discussion on the justiciability of the orders sought by the applicants which was governed by art. 72(1) of the Federal Constitution, this court made it clear that the alleged contempt committed by the appellants resulting in the impugned orders of suspension against them did not arise within the walls of the Assembly but outside it, and that therefore the critical issue for the deliberation of the court was whether provision has been made for such contempt:

(34) As we answered only the first two questions this part of the judgment shall be confined only to an analysis of the law relating to them. *In answering the questions it must be remembered that the alleged contempts committed by the applicants resulting in their suspension did not arise within the walls of the Legislative Assembly but outside it.* This is obvious as the charge against them is for, *inter alia*, wrongly holding themselves out as Menteri Besar and Executive Council Members respectively. *Thus the critical issue for deliberation is whether provision has been made for such contempts as envisaged by the two questions.* (emphasis added)

Indeed, the importance of the fact that the alleged acts of contempt were committed beyond the walls of the Legislative Assembly was emphasised further in the judgment of this court where, immediately after referring to *Kielley v. Carson* 4 Moore's PC Cases 63, (in which it was held that in the absence of express grant, Legislative Assemblies in the British Colonies have no power to adjudicate or punish contempts committed beyond their walls), it concluded that there must be specific legal authority to take cognisance of and punish for contempt, and that that was particularly significant where the alleged contempt was committed beyond the wall of the Legislative Assembly:

> Thus it has been held in *Kielly v. Carson* 4 Moore's PC Cases 63 that the Legislative Assemblies in the British Colonies have, *in the absence of express grant, no power to adjudicate upon or punish, contempts committed beyond their walls.*
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> *It is thus manifestly patent that there must be specific legal authority to take cognizance of and punish for contempt. This is particularly significant where the alleged contempt was committed beyond the walls of the Legislative Assembly.* The need for such authority is recognised in Article XLIV of the Perak Constitution which reads as follows:
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> (1) Subject to the provisions of the Federal Constitution and this Constitution, the Legislative Assembly shall regulate its own procedure and may, from time to time, make, amend and revoke standing Rules and Orders for the regulation and orderly conduct of its own proceedings and the conduct of business. (emphasis added)

[61] The decision in *Kielley v. Carson* that in the absence of express grant, the Legislative Assemblies in the British Colonies have no power to adjudicate upon or punish, contempt committed beyond their walls, was the basis for this court's decision that there must be specific legal authority to take cognisance of and punish for contempt. That was particularly significant where the alleged contempt was committed beyond the walls of the legislative assembly. In our view, the judgment of this court that art. 72(1) of the Federal Constitution must be read as being subject to the existence of a power or jurisdiction (be it inherent or expressly provided for) to do whatever that has been done and that the court was empowered to ascertain whether the power that has been claimed has been provided for, should be read in light of the factual context of the case as aforesaid, and the critical issue whether there existed a power for the Legislative Assembly to

suspend certain assemblymen for specific alleged acts of contempt. It follows that the *ratio decidendi* to be distilled from the judgment should be limited accordingly. We do not believe that the judgment in *Dato' Dr Zambry* can be taken to have laid down the proposition that all acts of the Legislative Assemblies and that of their committees, or the Houses of Parliament and that of their committees are amenable to scrutiny and correction by the courts, because that will render meaningless the constitutional immunity guaranteed under art. 72(1) and art. 63(1) of the Federal Constitution and para. 2 in the Schedule to the Selangor Constitutions (as well as Constitutions of other States having similar provisions).

[62] Unlike *Dato' Dr Zambry*, the present appeal is concerned with the resolution of the Legislation Assembly made within its walls establishing a select committee and the conduct and proceedings which took place within that committee. *Dato' Dr Zambry* is therefore distinguishable. What we have said thus far is sufficient to dispose of the present appeal. Be that as it may, additionally, in our view, even if the decision in *Dato' Dr Zambry* is to be applied to the present appeal, our conclusion on the justiciability of the matters raised in the originating summons would still be the same. Applying *Dato' Dr Zambry* the question is – was there in existence a power or jurisdiction (be it inherent or expressly provided for) to support the motion and resolution of the SLA in establishing SELCAT. If there existed such a power or jurisdiction then the proceedings of the SLA in establishing SELCAT and the ensuing proceedings of SELCAT must be immune from legal challenge in a court of law by virtue of art. 72(1) of the Federal Constitution and para. 2 in the Schedule to the Selangor Constitution. On the other hand if such a power or jurisdiction did not exist, then the court was empowered to enquire into the proceedings and nullify the aforesaid resolution made by the SLA. Elsewhere in this judgment, we have set out the crucial provisions relating to parliamentary privileges applicable to State Legislative Assemblies provided under art. 72 of the Federal Constitution and paras. 2 and 3 in the Schedule to the Selangor Constitution. Under art. 75 of the Selangor State Constitution, the SLA is the master of its own proceedings and conduct of its business. It is empowered to regulate its own procedure, to make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of its own proceedings and conduct of business:

A 75. **Procedure of Legislative Assembly**

(1) Subject to the provisions of the Federal Constitution and this Constitution, *the Legislative Assembly shall regulate its own procedure and may from time to time make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct* B *of its own proceedings and conduct of business*.

(2) The Legislative Assembly may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled thereto shall not invalidate any proceedings. C

(3) Subject to Clause (4) and Article 98 the Assembly shall, if not unanimous, take its decision by a simple majority of members voting; and the person presiding shall cast his vote whenever necessary to avoid an equality of votes, but shall not vote in any other case. D

(4) In regulating its procedure the Assembly may provide, as respects any decision relating to its proceedings, that it shall not be made except by a specified majority or by a specified number of votes.

E

(5) Members absent from the Assembly shall not be allowed to vote.

[63] Article 77 of the Selangor Constitution provides that the Legislative Assembly shall have the privileges and powers set out F in the Schedule to the Constitution. Paragraphs 2 and 3 in the Schedule contain the privileges which are applicable to the present appeal.

[64] Pursuant to art. 75 of the Selangor Constitution, the G Standing Orders were made. Now, the thrust of the primary complaint of the respondents was that when the SLA established SELCAT on 26 May 2008, it did not comply with Standing Order 72(1) of the Standing Order, and thus it had no legal basis to do so. We are unable to accept that submission. The case of *Dato' H Dr Zambry* did not decide the proposition advanced by learned counsel for the respondents. To reiterate, in *Dato' Dr Zambry* this court held that art. 72(1) of the Federal Constitution must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has I been done. In the present case it is clear that the Standing Orders provide for the appointment of Select Committees.

Standing Orders 68 to 70 deal with Sessional Select Committees. Standing Orders 68 provides for the appointment of a Public Accounts Committee. Standing Orders 69 and 70 respectively provide for the appointment of the Standing Order Committee and the Committee of Privileges. It is also clear as admitted by learned counsel for the respondent that the power for the SLA to appoint SELCAT existed under the Standing Orders. Standing Order 71(1) provides:

> 71. (1) A Select Committee other than a Sessional Committee shall be known as a **Special Select Committee. It shall be appointed by order of the Assembly** and it shall consist of such members as may be appointed by the Assembly.
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> (2) Subject to the order of the Assembly, a special Select Committee shall have power to elect its own Chairman. If the member so elected is unable to be present at any meeting, the Committee shall elect another Chairman whose tenure of office shall be for the day of his election.

[65] The respondents' primary complaint concerned the effect of the provision relating to the composition of SELCAT under Standing Order 72(1) of the Standing Orders which states:

> Every Select Committee shall be so constituted as to ensure that, so far as is practicable, the balance between the parties within the Assembly is reflected in the Committee.

[66] It was contended on behalf of the respondents that the motion and resolution establishing SELCAT which comprised five members from Pakatan Rakyat (including the Chairman) and two members from Barisan Nasional did not comply with Standing Order 72(1) of the Standing Orders. According to the learned counsel for the respondents, the membership of SELCAT should have been in the balance of four members from Pakatan Rakyat and two members from Barisan Nasional. With respect we are unable to agree. Who was to decide that the balance between the parties within the SLA so far as practicable would be reflected in the Committee? In our view – the SLA. It is for the SLA to regulate and be the judge of the lawfulness of its proceedings. It is exclusively for the SLA to construe Standing Order 72(1) (as well as other relevant Standing Orders) in making its resolution. It is not for the court or any authority outside the SLA to say that such and such should be the interpretation or the effect of the standing order in question. It was for the SLA to decide whether its decreed procedures have in fact been followed. It was for the

SLA to lay down and construe its Standing Orders and decide whether they have been obeyed. It was also for the SLA to decide whether to dispense with compliance of such orders. We derive support for this proposition from the House of Lords decision in *British Railways Board and Another v. Pickin* [1974] 1 All ER 609. In *Pickin*, the land on which a branch railway line ran was vested in the British Railways Board as successors in title to the company which, under a special Act of 1845, had originally acquired the land for the purpose of building the line. The 1845 Act incorporated s. 259 of an earlier special Act, which provided that, if the railway should be abandoned, or for a period of three years cease to be used, the lands taken under the special Act should vest in the owners for the time being of the adjoining land. In 1968 Parliament passed a private Act (the British Railways Act 1968) which, by s. 18(I), provided that s. 259 of the 1836 Act 'shall not apply to any lands vested in the Board'. In 1969 the plaintiff purchased from the owner of a piece of land adjoining the railway line all his estate and interest in the piece of land and track forming part of the line. The plaintiff brought an action against the board claiming, *inter alia*, a declaration that, under s. 259 of the earlier special Act, he was the owner, or entitled to the possession of, the land forming part of the branch railway line. By their defence the board relied on s. 18(I) of the 1968 Act. By paras. 3 and 4 of his reply, the plaintiff alleged in effect that, in obtaining the enactment of s. 18 of the 1968 Act in their favour, the board had fraudulently concealed certain matters from Parliament and its officers and thereby misled Parliament into granting them the right conferred by s. 18(I); and that s. 18(I) was therefore ineffective to deprive the plaintiff of his land or proprietary rights. In para. 3 of the amended reply there was an allegation that a recital in the preamble to the Act was false, followed by an allegation that the Railway Board knew that there was a false recital, and an allegation that no notice was given of the intended compulsory acquisition. Paragraph 4 of the amended reply was as follows:

> 4. If section 18 on its true construction bars this action either by depriving the [respondent] of his interest in land without compensation or otherwise, the [board] as promoters of the said Bill **have broken the Standing Orders of Parliament** and **have failed to comply with the same** and have included a misleading preamble and have misled Parliament and the said local Act being solely for the benefit of the [board] and obtained *ex parte* as an

> unopposed bill is ineffective to deprive the [respondent] of his land or proprietary rights and the [board] cannot rely on [the Act]. (emphasis added)

[67] The board applied for an order that the reply be struck out under RSC O. 18, r. 19, on the ground that it was frivolous and an abuse of the process of the court. The master ordered that paras. 3 and 4 of the amended reply be struck out and that order was affirmed by the judge. The Court of Appeal, however, allowed the plaintiff's appeal on the ground that paras. 3 and 4 raised a triable issue. On appeal by the board, it was held by the House of Lords that the appeal should be allowed and paras. 3 and 4 of the reply struck out, because the substance of the plea was that the court was entitled to, and should, disregard what Parliament had enacted. The House of Lords held that the courts had no power to disregard an Act of Parliament, whether public or private, nor had they any power to examine proceedings in Parliament in order to determine whether the passing of an Act had been obtained by means of any irregularity or fraud. (See [1974] 1 All ER p. 609). In his judgment Lord Reid said that the court had no concern with the manner in which Parliament or its officers carry out its Standing Orders in performing their functions and that for a very long time, both Parliament and the courts have been careful not to act so as to cause conflict between them:

> The function of the court is to construe and apply the enactments of Parliament, **The court has no concern with the manner in which Parliament or its officers carrying out its Standing Orders perform these functions**. Any attempt to prove that they were misled by fraud or otherwise would necessarily involve an enquiry **into the manner in which they had performed their functions** in dealing with the bill which became the British Railways Act 1968.
>
> In whatever form the respondent's case is pleaded he must prove not only that the appellants acted fraudulently but also that their fraud caused damage to him by causing the enactment of section 18. He could not prove that without an examination of the manner in which the officers of Parliament dealt with the matter. So the court would, or at least might, have to adjudicate on that.
>
> For a century or more both Parliament and the courts have been careful not to act so as to cause conflict between them. Any such investigations as the respondent seeks could easily lead to such a conflict, and I would only support it if compelled to do so by

clear authority. But it appears to me that the whole trend of authority for over a century is clearly against permitting any such investigation. (emphasis added)

[68] The judgment of Lord Morris of Borth-Y-Gest was explicit in the dismissal of the allegation of the breach and non compliance of the Standing Orders of Parliament. His Lordship said:

In paragraph 3 of the amended reply there is an allegation that a recital in the preamble was false. Whether on a fair reading of the whole Act this is arguable has not now to be decided. There follows an allegation of fraud (i.e that the British Railways Board knew that there was a false recital) and an allegation that no notice was given of 'intended compulsory acquisition'. Whether or not it is apt to describe the effect of section 18 as compulsory acquisition does not now arise. But whether or not there are many points of construction of the Act that can be formulated, *what para 4 of the amended reply proceeds to assert is (a) that the British Railways Board broke the Standing Orders of Parliament and (b) failed to comply with the Standing Orders of Parliament and (c) included a misleading preamble and (d) misled 'Parliament' and (e) obtained ex parte as an unopposed bill an Act which was solely for their benefit, and that as a result 'the Act is ineffective to deprive the [respondent]* of his land and proprietary rights' and furthermore that the British Railways Board 'cannot rely' on the Act.

Though here and there in the two paragraphs there occurs the word 'construction' I do not think that it can be doubted that the effect and the purpose of the two paragraphs is to assert that the courts could and should for the reasons which I have set out under (a) to (e) above disregard certain enacting provisions of the Act which is cited as the British Railways Act 1968, … I have no doubt that paras 3 and 4 of the amended reply should not be allowed to stand inasmuch as they assert and claim the exercise by the courts of a power to disregard what Parliament has enacted … The conclusion which I have reached results, in my view, not only from a settled and sustained line of authority which I see no reason to question and which I think should be endorsed but also from the view, that any other conclusion would be constitutionally undesirable and impracticable. It must surely be for Parliament to lay down the procedures which are to be followed before a bill can become an Act. *It must be for Parliament to decide whether its decreed procedures have in fact been followed. It must be for Parliament to lay down and to construe its Standing Orders and further to decide whether they have been obeyed; it must be for Parliament to decide whether in any particular case to dispense with compliance with such orders*. It must be for Parliament to decide whether it is satisfied that an Act should be passed in the form and with the wording set out in the Act. *It must be for the Parliament to decide what documentary material or*

testimony it requires and the extent to which Parliamentary privilege should attach. It would be impracticable and undesirable for the High Court of Justice to embark on an enquiry concerning the effect or the effectiveness of the internal procedures in the High Court of Parliament or an enquiry whether in any particular case those procedures were effectively followed. (emphasis added)

[69] In his judgment Lord Simon of Glaisdale also reaffirmed Parliament's exclusive right to determine the regularity of their own internal proceeding and the fundamental reason why that should be so:

A second concomitant of the sovereignty of Parliament is that *the Houses of Parliament enjoy certain privileges. These are vouchsafed so that Parliament can fulfil its key function in our system of democratic government. To adapt the words of Lord Ellenborough CJ in Burden v. Abbott … they [the Houses] would sink into utter contempt and inefficiency without [them].* Parliamentary privilege is part of the law of the land (see Erskine May's *Parliamentary Practice*). *Among the privileges of the Houses of Parliament is the exclusive right to determine the regularity of their own internal proceedings.*

What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject, – *Burdett v. Abbott* and *Stockdale v. Hansard*; – are agreed, and are emphatic.

(Lord Coleridge CJ in *Bradlaugh v. Gossett*). The rule, indeed, is reflected in the Bill of Rights 1688, art 9, s I, of which I italicise the words which are relevant to this appeal:

> That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any … place out of Parliament.

I have no doubt that the respondent in paras 3 and 4 of his reply (even as sought to be amended) is seeking to impeach proceedings in Parliament, and that the issues raised by those paragraphs cannot be tried without questioning proceedings in Parliament." (emphasis added)

[70] We are of the view that the remarks by Lord Morris in *Pickin* with regard to the extent and exclusivity of the Parliamentary power over the construction and employment of the Standing Orders are applicable to the present case in the determination of the effect of the relevant Standing Orders with regard to the establishment of SELCAT, and the power of the SLA on the application or otherwise of those Standing Orders.

Indeed, Standing Order 87 provides that the decision of the Speaker of the SLA upon any point of interpretation of any of the Standing Orders or upon any matter of practice, shall, subject to a substantive motion moved in the SLA for that purpose, be final:

> The decision of Mr Speaker upon any point of interpretation of any of these Standing Orders, or upon any matter of practice, shall subject to a substantive motion moved for that purpose, be final, and Mr Speaker may from time to time issue rulings thereon.

[71] Further, Standing Order 88 provides that all matters not specifically provided in the Standing Orders and all questions relating to the detailed working of the Standing Orders shall be regulated in such manner as the Speaker may direct from time to time:

> All matters not specifically provided in these Orders and all questions relating to the detailed working of these Orders shall be regulated in such manner, not inconsistent with these Orders, as Mr Speaker may from time to time direct; and in giving any such direction Mr Speaker shall have regard to the usages of Commonwealth Parliamentary practice so far as such usages can be applied to the proceedings of the Assembly.

[72] Moreover, Standing Order 92 of the Standing Orders provides that failure of the SLA or any committee to comply with any of the provisions of the Standing Orders shall not nullify any of the proceedings or decision:

> 92. Where in making of any decisions there has been a failure on the part of the Assembly or any Committee thereof to comply with any of the provisions of the Standing Order in the proceedings leading to the decision, such failure shall be treated as merely an irregularity and shall not in anyway nullify the proceedings or the decisions resulting therefrom.

[73] Regarding declaration (ii) in the originating summons, the substance of the complaint of the respondents was that in so far as the resolution authorised SELCAT to conduct public hearings, and allowed the dissemination and publication of its report prior to the presentation of its formal report to the SLA, the resolution completely disregarded Standing Order 75 which provides:

> The evidence taken before any Select Committee and any documents presented to such Committee shall not be published by any member of such Committee, or by any other person, before the Committee has presented in Report to the Assembly.

In the resolution establishing SELCAT, the SLA authorised SELCAT to conduct public hearing either wholly or in part and the evidence in the public hearing may be published. The relevant part of the motion which was passed by the SLA reads as follow:

> Walau apa pun yang diperuntukkan di bawah Peraturan 75 Peraturan-Peraturan Tetap Dewan Negeri, SELCAT berkuasa untuk mengadakan pendengaran awam, sama ada secara penuh atau sebahagian daripadanya dan keterangan-keterangan dalam pendengaran awam tersebut bolehlah disiarkan.

Again, the respondent in effect sought to impeach the validity of the intra-mural activity of the SLA. Is the internal working and intra-mural activity of the SLA as such justiciable? Applying *Dato' Dr Zambry*, the question is, was there in existence a power or jurisdiction (be it inherent or expressly provided for) to support that part of the motion and resolution of the SLA? In our view for reasons which we will set out shortly the answer is the affirmative. The paramount public and national importance that proceedings of the houses of Parliament should be communicated to the public (which in our view is similarly relevant in the context of the proceeding in the State Legislature as in the present case) had been stressed more than 100 years ago in *Wason v. Walter*, LR 4 QB 73, where Cockburn CJ delivering the judgment of the court said:

> We entirely concur with Lawrence, J., in *Rex v. Wright* (1), that the same reasons which apply to the reports of the *proceedings in courts of justice apply also to proceedings in parliament. It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the houses of parliament shall be communicated to the public, who have the deepest interests in knowing what passes within their walls, seeing that on what is there said and done, the welfare of the community depends*. Where would be our confidence in the government of the country or in the legislature by which our laws are framed, and to whose charge the great interests of the country are committed, – where would be our attachment to the constitution under which we live, – if the proceedings of the great council of the realm were shrouded in secrecy and concealed from the knowledge of the nation? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is

A passing in either house? Can any man bring himself to doubt that the publicity given in modern times to what passes in parliament is essential to the maintenance of the relations subsisting between the government, the legislature, and the country at large?" (emphasis added)

B **[74]** As for the SLA, it is empowered to allow people other than its members (officially referred to as "orang luar" ie, non members to attend its proceedings, subject to such rules as the Speaker may make for that purpose from time to time. This is provided by Standing Order 81 of the Standings Orders (similar to Standing C Order 93 of the Standing Orders of the Dewan Rakyat):

81. (1) Orang 5 orang luar dibenarkan hadir menyaksikan mesyuarat dalam Dewan Mesyuarat mengikut apa-apa peraturan yang dikeluarkan oleh Tuan Speaker dari satu masa ke satu masa. D

(2) Jika sesiapa ahli memberitahu ada orang-orang luar hadir, maka Pengerusi dengan serta-merta hendaklah mengemukakan masalah "Iaitu orang-orang luar hendaklah keluar" bagi diputuskan dengan tidak dibenarkan dibahas atau dipinda.

E

(3) Pengerusi, bila-bila baik pada fikirannya, bolehlah memerintahkan orang-orang keluar daripada Dewan Mesyuarat itu sama sekali atau daripada mana-mana bahagian Dewan Mesyuarat.

F (4) Setiausaha Dewan hendaklah menahan sesiapa orang luar yang nampak olehnya masuk dengan tidak mendapat kebenaran atau yang diberitahu kepadanya mengatakan ada mana-mana bahagian Dewan Mesyuarat atau tempat pemerhati dan juga sesiapa orang luar yang telah dibenarkan masuk tetapi berkelakuan tidak baik, atau yang enggan keluar daripada G diperintahkan keluar pada masa Dewan atau jawatankuasa sesebuah Dewan bersidang.

[75] In addition, Standing Order 82 of the Standing Orders (similar to Standing Order 94 of the Standing Orders of the H Dewan Rakyat) provides that the Speaker of the SLA may grant permission to the representative of any newspaper to attend its sittings subject to such rules as the Speaker may make from time to time:

I Tuan Speaker boleh mengeluarkan kebenaran am kepada wakil apa-apa Akhbar kerana menghadiri persidangan Dewan mengikut apa-apa peraturan yang dikeluarkannya dari satu masa ke satu masa. Jika wakil itu melanggar peraturan-peraturan itu, maka kebenaran itu harus akan ditarik balik.

[76] Select Committees such as SELCAT can be regarded as extension of the SLA. In Erskine May *Parliamentary Practice*, 23rd edn., pp. 738, 746, the author observed:

> Select committees are appointed by the House to perform a wide range of functions on the House's behalf. Most notably they have become over recent years the principle mechanism by which the House discharges its responsibilities for the scrutiny of government policy and actions. Increasingly this scrutiny work has become the most widely recognized and public means by which Parliament holds government Ministers and their departments to account. ... Select Committees are regarded as **extension** of the House, limited in their inquiries by the extent of the authority given them, but governed for the most part in their proceedings by the same rules as those which prevail in the House ...

[77] We have said earlier that applying the reasoning in *R v. Chaytor* "proceeding in the assembly" under para. 2 in the Schedule to the Selangor Constitution, and "proceedings in the Legislative Assembly" under art. 72(1) of the Federal Constitution include proceedings in SELCAT (being a committee established by the SLA), as this is where (in addition to the proceedings in the SLA itself), the core or essential business of the SLA takes place. Indeed, in *Hj Salleh Jafaruddin*, Wan Hamzah SCJ opined that the proceedings of the Committee of Privileges Sarawak formed part of the proceedings of the Sarawak Legislative Assembly. (See para. 47 of this judgment).

[78] Similarly, in the present appeal, SELCAT was a committee established under Standing Order 71 read with Standing Order 72(1) of the Standing Orders. The proceedings of SELCAT as a Committee established under the Standing Orders formed part of the proceedings of the SLA. In our view, since Standing Order 81 empowers the SLA to grant people other than its members to attend its proceedings, it must logically follow that it had the power (by the resolution made within its walls) to authorise SELCAT to make its hearing public, wholly or in part.

[79] The other part of the respondents' complaint is that the SLA had acted in breach of Standing Order 75. Again the validity of the SLA own internal proceedings is being questioned here. Standing Order 75 prohibits premature publication of evidence taken before any select committee and any document presented before it by any member or any other person before the Committee has presented its report to the SLA. Breach of this may constitute contempt of the SLA. What if the publication of

A the evidence and documents aforesaid were authorised by the SLA? This raises the question whether the SLA has the power to authorise the publication? In our view the SLA has the power to authorise the publication of such evidence and documents. The SLA must have the control over the publication of its proceeding,
B and this is where art. 72 of the Federal Constitution, one of the provisions on privileges of the Legislative Assembly, comes into play. Article 72(3) provides:

> No person shall be liable to any proceedings in any Court in
C respect of anything published by or under the authority of the Legislative Assembly of any State.

[80] That provision provides immunity against any proceeding in any court in respect of anything published by the SLA under the authority of any State Legislative Assembly. In other words, the
D State Legislative Assembly has the power to authorise publication of anything in respect of the proceedings in the SLA or any committee thereof. In the present appeal in respect of SELCAT, the SLA had, in its wisdom authorised the publication, and its authorisation was in the form of the resolution itself. So, there was
E really no breach of Standing Order 75 of the Standing Orders. In this regard, in dealing with the argument that the publication of Parliamentary proceeding is illegal as being contrary to the Standings Orders of both houses of Parliament, the court in *Wason v. Walter* said:

F

> It only remains to advert to an argument urged against the legality of the publication of parliamentary proceedings, namely, that such publication is illegal as being in contravention of the Standing Orders of both houses of parliament. The fact, no doubt, is, that each house of parliament does, by its Standing
G Orders, prohibit the publication of its debates. But, practically, each house not only permits, but also sanctions and encourages, the publication of its proceedings, and actually gives every facility to those who report them. Individual members correct their speeches for publication in Hansard or the public journals, and in
H every debate reports of former speeches contained therein are constantly referred to. Collectively, as well as individually, the members of both houses would deplore as a national misfortune the withholding their debates from the country at large. Practically speaking, therefore, it is idle to say that the publication of
I parliamentary proceedings is prohibited by parliament. The standing orders which prohibit it are obviously maintained only to give to each house the control over the publication of its proceedings, and the power of preventing or correcting any abuse of the facility afforded. Independently of the orders of the houses,

> there is nothing unlawful in publishing reports of parliamentary proceedings. Practically, such publication is sanctioned by parliament; it is essential to the working of our parliamentary system, and to the welfare of the nation. Any argument founded on its alleged illegality appears to us, therefore, entirely to fail.

[81] Anyway, as has been said earlier, applying *British Railway Board v. Pickin*, it was for the SLA to decide whether its decreed procedures have been followed. It was for the SLA to lay down and construe its Standing Orders, to decide whether they have been obeyed, and more importantly and relevant to the issue at hand, to decide whether in any particular case to dispense compliance with such orders. In the present appeal the SLA had resolved to dispense with the compliance with Standing Order 75. In our view that decision is not justiciable in the court of law. Indeed, the attitude of the court in respect of the complaint that a certain resolution of the legislature travelled beyond its internal regulation and procedure was demonstrated more than 100 years ago in *Bradlaugh v. Gossett (supra)*, when the court dealt with the argument of the plaintiff that the resolution of the House of Commons against him was illegal. Stephen J said:

> The plaintiff argued his own case before us at length. It is due to him to state the reasons why his arguments do not convince me. He referred to a great number of authorities; but his argument was in substance short and simple. *He said that the resolution of the House of Commons was illegal, as the House had no power to alter the law of the land by resolution; and, admitting that the House has power to regulate its own procedure, he contended that in preventing him from taking his seat, the House went beyond matter of internal regulation and procedure, as they deprived both him and the electors of Northampton of a right recognized by law, which ought to be protected by the law; and so inflicted upon him and them wrongs which would be without a remedy if we failed to apply one.* I think that each part of this argument requires a plain, direct answer.
>
> It is certainly true that a resolution of the House of Commons cannot alter the law. If it were ever necessary to do so, this Court would assert this doctrine to the full extent to which it was asserted in *Stockdale v. Hansard*. (1) The statement that the resolution of the House of Commons was illegal, must I think, be assumed to be true, for the purposes of the present case. The demurrer for those purposes admits it. We decide nothing unless we decide that, even if it is illegal in the sense of being opposed to the Parliamentary Oaths Act, it does not entitle the plaintiff to the relief sought. This admission, however, must be regarded as being made for the purposes of argument only. It would, as I

A have already said, be wrong for us to suggest or assume that the House acted otherwise than in accordance with its own view of the law; and, as we know not what that view is, nor by what arguments it is supported, we can give no opinion upon it. I do not say that the resolution of the House is the judgment of a
B Court not subject to our revision; but it has much in common with such a judgment. The House of Commons is not a Court of Justice; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. We must presume that it discharges this function properly and
C with due regard to the laws, in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case by a judge whose decision is not subject to appeal. There is nothing startling, in the recognition of the fact that such an error is possible. If, for instance, a jury in a criminal case give a perverse verdict, the law has provided no remedy.
D The maxim that there is no wrong without a remedy does not mean, as it is sometimes supposed, that there is a legal remedy for every moral or political wrong. If this were its meaning, it would be manifestly untrue. There is no legal remedy for the breach of a solemn promise not under seal and made without
E consideration; nor for many kinds of verbal slander, though each may involve utter ruin: nor for oppressive legislation, though it may reduce men practically to slavery; nor for the worst damage to person and property inflicted by the most unjust and cruel war. The maxim means only that legal wrong and legal remedy are
F correlative terms; and it would be more intelligibly and correctly stated, if it were reversed, so as to stand, "Where there is no legal remedy, there is no legal wrong."

[82] Coleridge CJ opined that in such matter the remedy lay not in action in the courts of law but by an appeal to the
G constituencies whom the House of Commons represents:

It is said that in this case the House of Commons has exceeded its legal powers, because it has resolved that the plaintiff shall not take an oath which he has a right to take, and the threatened force is force to be used in compelling obedience to a resolution
H in itself illegal. But there is nothing before me upon which I should be justified in arriving at such a conclusion in point of fact. Consistently with all the statements in the claim, it may be that the plaintiff insisted on taking the oath in a manner and under circumstances which the House had a clear right to object to or
I prevent. Sitting in this seat I cannot know one way or the other. But, even if the fact be as the plaintiff contends, it is not a matter into which this Court can examine. If injustice has been done, it is injustice for which the Courts of law afford no remedy. On this

> point I agree with and desire to adopt the language of my Brother Stephen. The history of England, and the resolutions of the House of Commons itself, shew that now and then injustice has been done by the House to individual members of it. But the remedy, if remedy it be, lies, not in actions in the courts of law (see on this subject the observations of Lord Ellenborough and Bayley, J., in *Burdett v. Abbott*, 14 East, 150, 151, and 160, 161), but by an appeal to the constituencies whom the House of Commons represents.

[83] Moreover, back to the present appeal, pursuant to Standing Order 92 of the Standing Orders, even if there was a failure to comply with Standing Order 75, it did not nullify the resolution of the SLA.

[84] Prayer (iii) seek to impeach or question all the proceedings conducted by SELCAT as being contrary to the rules of natural justice because the first defendant, as Chairman was alleged to be in a situation of conflict in view of his position as Speaker of the SLA as well as the Chairman of the Privileges Committee of the SLA. In our view, the short answer is in the affirmative. The power is provided by the SLA's resolution establishing SELCAT whereby the first defendant was appointed as Chairman of SELCAT. As for the SLA, as we have said, the power to pass such a resolution was provided for under Standing Order 71. It empowered the SLA by its order, to establish SELCAT consisting of such members as may be appointed by the SLA, read together with Standing Order 72(1). There is nothing in the Standing Orders prohibiting the SLA appointing the Speaker as the Chairman of SELCAT. In fact in addition to being the Chairman of the Standing Order Committee, by virtue of Standing Order 69(1), the first defendant as Speaker of the SLA, is also the Chairman of the Committee of Privileges by virtue of Standing Order 70(1). It is this Committee of Privileges which is given the important duty to consider any matter which appears to effect the powers and privileges of the SLA referred to it by the SLA which include any contempt of the SLA by its members, and to submit a report to the SLA which is presided by the first defendant as Speaker. If the Speaker can be the Chairman of this committee, in the absence of an express provision in the Standing Orders prohibiting the appointment of the Speaker as Chairman of a Select Committee established under Standing Order 71(1), there is no reason why the Speaker cannot be the Chairman of SELCAT which is, an investigative body of the SLA. In our view, this was

a matter within the realm of internal arrangement of the SLA. The SLA had the inherent power to appoint the first defendant (the Speaker) as the Chairman of SELCAT.

[85] Alternative prayer (iv) sought to impeach or question the functions and proceedings of SELCAT on the ground that it had acted in excess of its jurisdiction because in carrying out such functions and proceedings it inquired into matters reserved for the Public Account Committee under Standing Order 68(1)(b) and (d) of the Standing Orders. In our view, there can be no question as to the existence of the power or jurisdiction for SELCAT to carry out the impugned functions and proceedings. The requisite power or jurisdiction was provided by the resolution of the SLA establishing SELCAT. What in affect was questioned was how SELCAT actually carried out its functions and proceedings. In prayer (v) which overlaps with prayer (iv), the complaint is that the matters deliberated by SELCAT exceeded the scope of the matters referred to it by the SLA, and that therefore the proceedings are null and void as being contrary to Standing Order. As in the case of prayer (iv), in respect of prayer (v) too there is no question as to the existence of the power or jurisdiction for SELCAT to conduct the impugned proceedings. This was provided by the SLA resolution establishing SELCAT. Again, what in effect was sought to be questioned was how SELCAT actually conducted its proceedings. In carrying out its functions and proceedings, SELCAT is governed by Standing Order 73(4) in that its deliberations shall be confined to the matter referred to it by the SLA. But then to adopt the words of Lord Reid in *Pickin (supra)* "Court has no concern with the manner in which" SELCAT carry out the Standing Order to perform its functions and proceedings. To adopt the words of Lord Morris in *Pickin*, "it would be impracticable and undesirable" for the court "to embark on an enquiry concerning the effect or the effectiveness of the internal procedures" in SLA and SELCAT "or an enquiry whether in any particular case those procedures were effectively followed." As demonstrated earlier, even if SELCAT had gone beyond what was provided in Standing Order 73(4), to adopt the words of Coleridge CJ in *Bradlaugh v. Gossett*, it is not a matter into which the court can examine. It would not in our view, be appropriate for the court to exercise its supervisory powers to scrutinise what SELCAT did in its investigation in the exercise of the power conferred by the SLA. The supervisory responsibility on SELCAT belongs to the SLA. Indeed, by virtue of Standing Order 92, even

if there was a failure by SELCAT to comply with Standing Order 73(4) or any other Standing Order, such failure shall be treated as merely an irregularity and shall not in anyway nullify the proceedings of SELCAT.

Conclusion

[86] For the reasons aforesaid, the matters raised in prayers (i), (ii), (iii), (iv), (v) and (vii) of the Originating Summons cannot be impeached or questioned in any Court. In other words they are not justiciable. That in our view would be sufficient to dispose of the present appeal. We find no necessity to answer the leave question as framed.

[87] In the result, the appellants' appeal is allowed.

Consequently:

(a) the decision of the Court of Appeal is set aside;

(b) the decision of the High Court is reinstated.